

# Exhibit VW 1



MASTER SUBCONTRACT AGREEMENT (MSV-(L))

Effective Date: 28 September 2017

PARTIES (the "Parties")	
"Subcontractor"	"Vigor"
BMT Designers & Planners, Inc. ("BMT D&P")	Vigor Works LLC
4401 Ford Avenue, Suite 1000 Alexandria, VA 22302 USA Attn: MSV(L) Project Manager	5555 N. Channel Avenue, Building No. 71 Portland, OR 97217 USA Attn: MSV(L) Project Manager
Contact: <u>Don Ryan</u>	Contact: <u>Tim Kolb</u>
Phone: <u>(703) 920-7070</u> x4001	Phone: <u>206-545-8485</u> ext 619
Email: <u>dryan@dandp.com</u>	Email: <u>tim.kolb@vigor.net</u>

APPENDICES/CONTRACT DOCUMENTS	
<input checked="" type="checkbox"/>	Work Order No. 1 ("Work Order No. 1"), attached as <u>Appendix A.1</u>
<input checked="" type="checkbox"/>	Price Sheet for Work Order No. 1 (the "Price Sheet"), attached as <u>Appendix A.2</u>
<input checked="" type="checkbox"/>	First Authorization to Proceed for Work Order No. 1, dated the Effective Date, attached as <u>Appendix A.3</u>
<input checked="" type="checkbox"/>	Bank Guarantee for Work Order No. 1, attached as <u>Appendix A.4</u>
<input checked="" type="checkbox"/>	Form of Work Order, attached as <u>Appendix B</u>
<input checked="" type="checkbox"/>	Form of Authorization To Proceed ("ATP"), attached as <u>Appendix C</u>
<input checked="" type="checkbox"/>	Rate Sheet for Growth Work (the "Rate Sheet"), attached as <u>Appendix D</u>
<input checked="" type="checkbox"/>	Standard Terms and Conditions (the "Standard Terms"), attached as <u>Appendix E</u>
<input checked="" type="checkbox"/>	FAR and DFAR flow down clauses (the "Flow Down Clauses"), attached as <u>Appendix F</u>
<input checked="" type="checkbox"/>	The License Agreement (MSV(L)) dated the same date as the Effective Date (the "License Agreement")
<input checked="" type="checkbox"/>	Contract W56HZV-17-D-0086 (the "Prime Contract") awarded on September 28, 2017 by the United States Army to Vigor for the fabrication of Maneuver Support Vessels (Light) (the "MSV(L)")

A. The Standard Terms, the Flow Down Clauses, the License Agreement, and (to the extent applicable to the Work to be performed by Subcontractor under this Master Subcontract Agreement) the Prime Contract, are incorporated in and form a part of this Master Subcontract Agreement (MSV-(L)) (this "Master Subcontract"), and all references to the "Master Subcontract" include, to the extent applicable, each of those documents.

B. This Master Subcontract is solely for goods and services to be provided by Subcontractor to Vigor in connection with the Prime Contract. If Vigor engages Subcontractor to perform services in connection with Vigor's sale of a vessel based on Subcontractor's design to any customer other than the Army, Vigor and Subcontractor will negotiate and enter into a separate subcontract for those services.



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C. Subcontractor will provide to Vigor, and Vigor will purchase from Subcontractor, the services and related deliverables described in Work Order No. 1 and in any subsequent Order (defined in the Standard Terms) in accordance with this Master Subcontract. This Master Subcontract describes the terms and conditions that will apply to each Order the Parties enter into.

D. Except as described in Work Order No. 1 and an *Authorization(s) To Proceed* dated and effective as of the Effective Date, nothing in this Master Subcontract obligates Vigor to order any goods or services from Subcontractor.

E. This Master Subcontract replaces and supersedes the Teaming Agreement dated 28 April 2015 between BMT D&P and Vigor Kvichak LLC, formerly known as Kvichak Marine Industries, Inc. (the "*Teaming Agreement*"), all other prior and/or contemporaneous proposals, understandings and agreements concerning the subject matter of this Master Subcontract, whether written, electronic or oral, as well as all other communications between or among any or all of the Parties related to that subject matter. However, nothing in this Master Subcontract supersedes, replaces or amends the Technical Assistance Agreement originally entered into on or about September 1, 2015, and amended on or about October 26, 2017 (collectively, the *TAA*"). The TAA remains in full force and effect in accordance with its terms.

F. To the extent that any Order, invoice, purchase order, shrink-wrap terms, or any other document issued by a Party after the Effective Date conflicts with the provisions of this Master Subcontract, the terms of this Master Subcontract will control unless that document references the specific provision of this Master Subcontract that is being modified or replaced and a duly Authorized Representative (as defined below) of each of the Parties to be bound signs that document. In no event may this Master Subcontract be modified orally or by course of dealing or performance.

Subcontractor:	Vigor:
BMT Designers & Planners, Inc.	Vigor Works LLC
By: 	By: 
Title: <u>President</u>	Title: <u>GM</u>
Date: <u>March 8, 2018</u>	Date: <u>3/8/18</u>

List of Appendices:

- Appendix A.1 - Work Order No. 1
- Appendix A.2 - Price Sheet for Work Order No. 1
- Appendix A.3 - First Authorization to Proceed for Work Order No. 1, dated the Effective Date
- Appendix A.4 - Bank Guarantee for Work Order No. 1
- Appendix B - Form of Work Order
- Appendix C - Form of Authorization To Proceed
- Appendix D - Rate Sheet for Growth Work
- Appendix E - Standard Terms
- Appendix F - Flow Down Clauses
- Appendix G - Interim and Final Lien Release Forms
- Appendix H - Authorized Publicity Statements

Appendix B – FORM OF ORDER – MSV-(L)<sup>1</sup>



**WORK ORDER**

( ) [Insert descriptor such as "Design Work"]


Effective Date: 20\_\_

PARTIES (the "Parties")							
"Subcontractor"	"Vigor"						
BMT Designers & Planners, Inc.	Vigor Works LLC [Or one of its Affiliates]						
4401 Ford Avenue, Suite 1000 Alexandria, VA 22302 USA Attn: MSV(L) Program Manager	5555 N. Channel Avenue, Building No. 71 Portland, OR 97217 USA Attn: MSV(L) Program Manager						
Contact:	Contact:						
Phone:	Phone:						
Email:	Email:						
Priority Rating	This is a rated order certified for national defense use, and Subcontractor must follow all the requirements of the Defense Priorities and Allocation System Regulations (15 C.F.R. Part 700).  Priority Rating: DOA4						
CLIN:							
Description/Scope of Work:							
MSV(L) Program Managers:	Subcontractor: Vigor:						
Work Schedule and Completion Date:							
Basis of Payment:  (Select one)	<input type="checkbox"/> Firm Fixed Price (FFP): \$. Subcontractor will submit invoices to Vigor based upon one of the following methods, as described in more detail in Exhibit A. <table border="1"> <tr> <td><input type="checkbox"/></td> <td>Schedule of Values</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Milestones</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Other</td> </tr> </table>	<input type="checkbox"/>	Schedule of Values	<input type="checkbox"/>	Milestones	<input type="checkbox"/>	Other
<input type="checkbox"/>	Schedule of Values						
<input type="checkbox"/>	Milestones						
<input type="checkbox"/>	Other						
	<input type="checkbox"/> Time and Materials (T&M) at the rates in the Rate Sheet. Subcontractor will submit invoices to Vigor each month for the time and expenses incurred during the previous month, which will not, in the aggregate,						

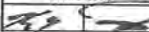
<sup>1</sup> This template is provided for the Parties' convenience. The Parties will negotiate the actual provisions in each new Work Order.

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		exceed \$ _____.
	<input type="checkbox"/>	Cost Plus (CP): Subcontractor will submit invoices to Vigor each month for Subcontractor's actual costs incurred during the previous month plus a markup of __%, which will not, in the aggregate, exceed \$ _____.
	<input type="checkbox"/>	Other
<b>Payment/Performance Guarantee</b>	<input type="checkbox"/>	Payment/Performance Bond in the amount of \$ _____
	<input type="checkbox"/>	Standby or Commercial Letter of Credit in the amount of \$ _____
	<input type="checkbox"/>	Bank Guarantee
<b>Effective Date:</b>	[_____, 201_] [The date Vigor issues Subcontractor an Authorization To Proceed with Work under this Order]	
<b>Warranty Period:</b>	[Example: The first of the following to occur: (a) _____ years after delivery of all Deliverables; or (b) __ year after the date the items Vigor manufactures from the Deliverables are first placed in service.]	
<b>Security Requirements:</b>	<input type="checkbox"/>	FOUO
	<input type="checkbox"/>	NOFORN
	<input type="checkbox"/>	Classified
	<input type="checkbox"/>	Confidential
	<input type="checkbox"/>	Secret
	<input type="checkbox"/>	Top Secret
	<input type="checkbox"/>	Export Restricted
	<input type="checkbox"/>	ITAR
	<input type="checkbox"/>	EAR
	<input type="checkbox"/>	Other:
<b>Source Documents?</b>	<input type="checkbox"/> Yes – If yes, please describe.	<input type="checkbox"/> No
<b>Source Code Escrow?</b>	<input type="checkbox"/> Yes – See, Section 3.16 of the Standard Terms.	<input type="checkbox"/> No
<b>Authorized lower tier subcontractors and suppliers:</b>	<p><b>BMT Nigel Gee Limited (Lead vessel technical design agent)</b>  Name of Point of Contact (POC): Tim Williams  POC Email: twilliams@bmtng.com  POC Telephone: 90 1144 23 8022 6655  Address: Building 14, Shamrock Quay  William Street  Southampton, Hampshire, SO 14 5QL, United Kingdom</p> <p><b>BMT Defence Services Limited (Systems development and requirements management support)</b>  Name of Point of Contact (POC): Bill Mitchelmore  POC Email: BMitchelmore@bmtdsl.co.uk  POC Telephone: 9011447768669822  Address: Maritime House  210 Lower Bristol Road  Bath BA2 3DQ, United Kingdom</p> <p><b>BMT Asset Performance Limited (Reliability Modeling &amp; Data Analysis Support)</b>  Name of Point of Contact (POC): James Ibbitson  POC Email: James.Ibbitson@bmtapl.com  POC Telephone: 44(0)1489 553141</p>	

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	<p>Address: First Floor, Berkeley House The Square, Lower Bristol Road Bath, BA 2 3BH United Kingdom</p> <p><b>Northrop Grumman Systems Corporation (C4N and CyberSecurity integration, supply and test; CSIL)</b> Name of Point of Contact (POC): David C. Robertson POC Email: david.robertson@ngc.com POC Telephone: (228) 327-3394 Address: 6608 Sun Scope Drive Ocean Spring, MS 39564 USA</p> <p><b>Trident Maritime (Alarms/Monitoring design and supply)</b> Name of Point of Contact (POC): Ryan Pitre POC Email: ryan.pitre@tridentllc.com POC Telephone: (504) 833-0294 Address: 2001 Jefferson Davis Highway, Suite 1112 Arlington, VA, 22202 USA</p> <p><b>Conley and Associates (Logistics Data/Provisioning)</b> Name of Point of Contact (POC): Misty Carrier POC Email: mcurrier@conley-inc.com POC Telephone: 636-779-2985 Address: 812 City Center Blvd Newport News, VA 23606 USA</p> <p><b>AMSEC (Logistics/Total Package Fielding/Interactive Engineering Technical Manuals)</b> Name of Point of Contact (POC): Ricky Collins POC Email: ricky.collins@amsec.hli-nns.com POC Telephone: 757.537.6803 Address: 1180 Pocahontas St Norfolk, VA 23511 USA</p> <p><b>James Fisher Mimic (Condition Monitoring integration support)</b> Name of Point of Contact (POC): Shaun Rowe POC Email: Shaun.Rowe@jfmimic.co.uk POC Telephone: 44(0)7966 531 739 Address: Unit 1, Enterprise House Manchester Science Park Pencroft Way Manchester, M15 6SE UK</p> <p>Others: <i>[Insert subcontractor/supplier's name as well as the name of the relevant POC and that person's email, phone number and physical address]</i></p>
<b>Additional Insurance:</b>	
<b>Additional Terms:</b>	

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1. This Work Order (this "**Order**") is subject in all respects to the Master Subcontract Agreement dated as of 28 September 2017 between BMT Designers & Planners, Inc. and Vigor Works LLC (the "**Master Subcontract**") and to the Contract Documents referenced in the Master Subcontract. Those documents are incorporated in and form a part of this Order and together with this Order and the documents attached to or referenced in this Order may be referred to as this "**Subcontract**". Any term used but not defined in this Order will have the meaning assigned to that term in the Master Subcontract and the Contract Documents.

2. This Subcontract is the entire agreement among the Parties concerning the Work described in this Order, and it replaces and supersedes all prior and/or contemporaneous proposals, understandings and agreements concerning that Work, whether written, electronic or oral, as well as all other communications between or among any or all of the Parties related to that Work.

3. To the extent that any invoice, purchase order, shrink-wrap terms, or any other document issued by a Party after the Effective Date of this Order conflicts with the provisions of this Subcontract, the terms of this Subcontract will control unless that document references the specific provision of this Subcontract that is being modified or replaced and a duly Authorized Representative (as defined below) of each Party signs that document. In no event may this Subcontract be modified orally or by course of dealing or performance.

<b>Subcontractor:</b> BMT Designers & Planners, Inc.  By: _____ Title: _____ Date: _____	<b>Vigor:</b> Vigor Works LLC [or one of its Affiliates]  By: _____ Title: _____ Date: _____
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BS [Signature]

Appendix C - Form of Authorization to Proceed (ATP)



ATHORIZATION TO PROCEED # \_\_\_\_\_

Work Order No. \_\_\_\_\_

Effective Date: \_\_\_\_\_

PARTIES (the "Parties")	
"Subcontractor"	"Vigor"
BMT Designers & Planners, Inc. 4401 Ford Avenue, Suite 1000 Alexandria, VA 22302 USA Attn: MSV(L) Project Manager	Vigor Works LLC [Or one of its Affiliates] 5555 N. Channel Avenue, Building No. 71 Portland, OR 97217 USA Attn: MSV(L) Project Manager
Contact: _____	Contact: _____
Phone: _____	Phone: _____
Email: _____	Email: _____

"TASK(s)"	
Description of Task(s) authorized under this ATP for CLIN <sup>1</sup> :	(Vigor will issue ATPs to Subcontractor as and when the Government authorizes and instructs Vigor to proceed with work under the Prime Contract).
Authorization Period for this ATP:	

PAYMENT INFORMATION	
Value of the Tasks described in this ATP:	\$_____ (the total of value of all ATPs for a given CLIN must not exceed the assigned value of that CLIN in the relevant Price Sheet)
Will Section 5.9 (Final Payment) of the Master Subcontract apply to the final payment under this ATP?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Vigor hereby authorizes Subcontractor to begin Work on the Tasks described above

<p align="center"><b>Vigor:</b></p> <p>Vigor Works LLC [or one of its Affiliates]</p> <p>By: _____</p> <p>Title: _____</p> <p>Date: _____</p>
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<sup>1</sup> NOTE: Use a separate ATP for each CLIN (i.e., do not include more than one CLIN in any ATP).

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**Appendix D – Rate Sheet for Growth Work**



*BMT will provide rate sheet for Growth Work, which will be inserted here. Any inflation adjustment should be included in that Rate Sheet.*

Labor Category	2018 Labor Rates*	2019 Labor Rates	2020 Labor Rates	2021 Labor Rates	2022 Labor Rates	2023 Labor Rates	2024 Labor Rates	2025 Labor Rates	2026 Labor Rates	2027 Labor Rates
Principal Engineer	\$ 185.00									
Senior Engineer	\$ 145.00									
Engineer	\$ 130.00									
Junior Engineer	\$ 95.00									
Senior Designer	\$ 105.00									
Junior Designer	\$ 85.00									

**Note \* Rates will be escalated annually by with the BUREAU OF LABOR STATISTICS, EMPLOYMENT COST INDEX**

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Appendix E - Standard Terms



STANDARD TERMS AND CONDITIONS

**1. Definitions.** The following capitalized terms will have the meanings assigned to those terms in this Section 1. Any other capitalized term that is used but not defined in these Terms will have the meaning assigned to that term in the Master Subcontract or in the Parties' License Agreement.

An "**Affiliate**" has the meaning assigned to that term in the License Agreement.

"**Army**" means the United States Army.

"**Authorized Representative**" means a Party employee that has been authorized by such Party to represent its interests under this Subcontract.

"**Deliverables**" means and includes (a) all Project IP and any documents that reflect Project IP; and (b) all tangible goods and other material that Subcontractor furnishes or is to furnish under this Subcontract.

"**Design Fees**" means the aggregate of (a) the Royalties payable under the License Agreement; and (b) the Price for all Services performed by or on behalf of Subcontractor under the Master Subcontract related to the Project IP, including in connection with their creation, testing, and modification.

"**Government**" means the Army and any other agency, department, division or subdivision of United States of America.

"**Intellectual Property Rights**" has the meaning assigned to it in the License Agreement.

"**License Agreement**" means the License Agreement dated the same date as the Master Subcontract between Vigor and Subcontractor.

"**Master Subcontract**" has the meaning assigned to that term in the Master Subcontract Agreement (MSV-(L)) dated as of 28 September 2017 by, between and among Vigor Works LLC and BMT Designers & Planners, Inc., a New York corporation.

"**Order**" means a work order, purchase order, or comparable document or collection of documents sent by Vigor to Subcontractor related to the Project, that either alone or taken together: (a) identifies the Work that Subcontractor is to provide and the date that Work is to be provided; (b) describes the Price and payment terms, and any special terms or conditions governing, the Work; and (c) has been executed by an Authorized Representative of Vigor. A sample Order form is attached to the Master Subcontract.

"**Price**" means the amount payable by Vigor to Subcontractor under an Order for the Work described in that Order.

"**Price Sheet**" means the price sheet attached to or referenced in a Work Order, or any lower price specified on the face of an Order or in an *Authorization To Proceed* issued under that Order.

"**Project**" means the design, production, testing, delivery, logistics, and post-delivery support of the Vessels.

"**Project IP**" has the meaning assigned to that term in the License Agreement.

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**"Protest"** means any protest of the Army's award of the Prime Contract to Vigor.

**"Protest Period"** means the period beginning on the Effective Date of the Master Subcontract and ending on the later of (a) the date when the Government has dismissed all Protests, or (b) if any appeal is filed, the date by which any and all such appeals have fully and finally been decided.

**"Rate Sheet"** means the rate sheet attached as Appendix D to the Master Subcontract or any lower rate specified in a rate sheet attached to an Order.

**"Resources"** means the individuals who perform Services, including the employees and independent contractors of Subcontractor, and/or any of its lower tier subcontractors.

**"Services"** means the services described in the portion of the Order entitled "Description/Scope of Work" and the administrative, support and other services necessary or desirable for Subcontractor to perform the Work as and when described in that Order and these Standard Terms.

**"Software"** means machine executable computer programming code supplied by or on behalf of Subcontractor, whether standalone or as part of a system (e.g., middleware or firmware).

**"Source Code"** means all computer programming code, in human-readable form, that is not suitable for machine execution without the intervening steps of interpretation and compilation, together with all specifications, programming and maintenance documentation, related source code trees, all testing tools used in the development and maintenance of the executable version of that Software program; all build instructions, commentary and related programmer notes and annotations; and the names and current contact information of the principal programmers who developed and/or designed that Software program.

**"Source Documents"** has the meaning assigned to that term in the License Agreement but for purposes of this Subcontract, means only the Source Documents listed or described in the relevant Order.

**"Specifications"** means and includes, as applicable: (a) the Army Technical Purchase Description (ATPD) dated 21 October 2016 in effect as of the date the Parties execute the Master Subcontract; and (b) any other standards and requirements in an Order and in the Contract Documents applicable to that Order. To the extent any standard or requirement in an Order conflicts with any standard or requirement in any Contract Documents applicable to that Order, the more stringent standard or requirement controls.

**"Subcontract"** means an Order as supplemented by the Master Subcontract and the Contract Documents referenced in the Master Subcontract.

**"Subcontractor"** means BMT Designers & Planners, Inc.

**"Third Party Source Documents"** means the Source Documents for Deliverables that Subcontractor purchases or otherwise acquires from anyone other than an Affiliate of Subcontractor.

**"Vessel"** means the Maneuver Support Vessel (Light) ("**MSV-(L)**") that Vigor or any of its Affiliates builds for the Army using BMT's hull design.

**"Vigor Developments"** has the meaning assigned to that term in the License Agreement.

**"Work"** means (a) the Services, (b) the Deliverables, and (c) the Source Documents, to be provided by BMT as described in an Order, in each case whether in existence before, or were created or performed after, the effective date of that Order.

**2. Prime Contract; Flow-down Clauses.** The following provisions will apply to each Order and to each Vessel sold or to be sold to the Army under the Prime Contract:

**2.1 Flow Down Provisions.** Because the Deliverables and the Source Documents will be used in connection with a Government contract, certain provisions in the Prime Contract and in the Federal

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Acquisition Regulations ("FARs") attached to the Master Subcontract and the Defense Federal Acquisition Regulations Supplement ("DFARS") and other agency clauses that supplement the FARs (collectively, with the FARs and DFARS, the "Flow Down Clauses") will apply to each Order; therefore, the provisions in the Prime Contract and the Flow Down Clauses that relate to the Deliverables, the Source Documents or any other goods or services provided or to be provided by Subcontractor under an Order are incorporated in that Order, including general, special and detail specifications, payment, acceptance, warranty, and intellectual property ownership provisions.

**2.2 Prime Contract.** Vigor has provided a copy of the Prime Contract to Subcontractor. Without limiting the preceding and notwithstanding any other provision in this Subcontract or any other document by or between the Parties, Subcontractor agrees that: (a) all obligations, responsibilities and liabilities imposed by the Prime Contract or by the Flow Down Clauses on Vigor, or by operation of law, are and will be assumed by Subcontractor with respect to the Deliverables, the Source Documents, and any related goods or services provided by or on behalf of Subcontractor under the Order; and (b) to the extent any standard or requirement in the Prime Contract or in any Flow Down Clauses conflicts with the Order or any other document by or between the Parties, the more stringent requirement controls.

**2.3 Applicability to Lower Tier Subcontractors.** Subcontractor agrees to flow down all applicable provisions in the Prime Contract and in the Flow Down Clauses to Subcontractor's lower-tier subcontractors and suppliers.

### **3. Subcontractor's General Obligations Regarding the Work.**

**3.1 Subcontractor's Qualifications.** Subcontractor represents that it is qualified to perform the Work in accordance with the Order for that Work. Subcontractor acknowledges that it has, based on its own independent review, ascertained the conditions required to perform the Work, and verified the correctness and accuracy of the information it has furnished to Vigor and/or the Government about Subcontractor's qualifications.

**3.2 The Work.** Subcontractor will perform the Services in a professional manner and in accordance with this Subcontract, will deliver the Deliverables and the Source Documents in a format reasonably requested by Vigor (ensuring that any tangible goods included in the Deliverables are new unless Vigor expressly provides otherwise in writing), and will, without additional cost to Vigor, furnish all other materials, labor, and services necessary to properly perform the Work. To the extent any Work is not explicitly covered in the Contract Documents but is reasonably inferable as being necessary to produce the intended result, Subcontractor will perform that Work, and it will be included in the Price.

**3.3 Substitutions.** Once the Army has accepted, approved or allowed a design, a Good or any other Deliverable, Subcontractor will not make any substitutions or changes to that Work, including the source of supply, (including at a lower price), without Vigor's prior written consent. If Vigor consents to any such substitution, Subcontractor will be deemed to have represented and warranted that those substituted Deliverables comply with the Specifications. Notwithstanding Section 14 or any other provision in this Agreement, Subcontractor will indemnify and hold harmless Vigor from and against any and all Losses (defined in Section 8.1 below) and increased costs, including overhead, that Vigor incurs as a result of any unauthorized substitutions, and Vigor may deduct those costs from amounts otherwise payable to Subcontractor.

**3.4 Time of Performance; Work Schedule.** Subcontractor will perform the Services and deliver the Deliverables and the Source Documents under an Order in a prompt and diligent manner as necessary to meet the work schedule, milestones, and completion date described in that Order. Notwithstanding the preceding, Vigor has the ultimate right to decide the time and/or order in which the

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various portions of the Work will be performed, the priority of the Work, and all matters related to Subcontractor's timely and orderly conduct of the Work in accordance with Section 7 (Change Control) below.

**3.5. Project Management.** Subcontractor and Vigor have designated, or will each designate, one or more persons to be their respective project managers. Subcontractor will not reassign or remove any of its designated project managers without first notifying Vigor in writing at least 30 days' before the effective date of the reassignment or removal.

**3.6. Communications with the Government.** Unless Vigor is present, participating, or otherwise included, Subcontractor will not contact, and will not discuss this Subcontract, the Prime Contract, the Work, the Project IP, or any other aspect of the Project with, the Government, without obtaining Vigor's prior written consent.

**3.7. Inspection and Acceptance.** All Deliverables will be subject to inspection and testing by Vigor and the Government. If the Deliverables or Source Documents do not comply with the Specifications and Subcontractor's warranties, Vigor may require Subcontractor to replace or correct those Deliverables and Source Documents and to re-perform any Services at no charge to Vigor or the Government. Any approval or inspection of the Work or any procedures, processes, or schedules related to the Work, by Vigor or the Government, will not in any way limit or diminish Seller's obligations under this Subcontract, including the warranties under Section 4 below. Once a Deliverable is accepted by the Government it shall be deemed accepted by Vigor, and upon Subcontractor's request, Vigor shall promptly notify Subcontractor, in writing, of the Government's acceptance. Thereafter, Subcontractor's obligations under this Subcontract with respect to such a Deliverable shall those described in Section 4 (Warranties).

**3.8. Compliance with Laws.** Subcontractor has complied, and will in the future comply, with all applicable federal, state, and local laws, ordinances and regulations in connection with its execution, delivery, and performance of each Order, including equal employment opportunity laws, Minority and Disadvantaged and Women Business Enterprise laws, the Occupational Safety and Health Act in its federal and state versions, tax laws, environmental and hazardous substance laws, and all other laws with which Contractor must comply according to the Contract Documents or otherwise. In addition, Subcontractor will be bound by, and at its own cost comply with, all applicable Federal Acquisition Regulations and any agency regulation that implements or supplements the FAR (e.g., DFARS) referenced in in this Subcontract and in the Prime Contract.

**3.9. Nonsolicitation.** During the term of the Master Subcontract and for a period of one year after its expiration or earlier termination, neither Vigor nor Subcontractor will, directly or indirectly, solicit, divert, or hire (or attempt to solicit, divert, or hire) for itself or for any other person, any person that was employed by the other Party during the term of this Subcontract, whether or not that employee is or was a full-time, part-time or temporary employee, whether or not that employment is or was pursuant to a written agreement, and whether or not that employment is or was for a determined period or at will.

**3.10. Safety.** Subcontractor and its Resources will conform to the highest safety practice standards, whether on or off any Project job site. Subcontractor will implement a comprehensive safety program that conforms to Subcontractor's and the Government's required safety practices, and all federal, state, or local laws, rules, regulations and/or orders applicable to health and safety. Subcontractor will maintain, and will ensure that its subcontractors maintain, a drug- and alcohol-free work environment, consistent with Subcontractor's and the Government's policies and programs. Subcontractor will conduct drug and alcohol screening tests on all Subcontractor Resources before they perform any Services at any Vigor or Government job site, and will conduct post-accident and reasonable-cause drug and alcohol screening tests on Resources present at any such job site.

**3.11. Permits, Fees, and Licenses.** Subcontractor will secure and pay for all permits, fees, licenses, assessments, and inspections necessary to complete the Work in accordance with this Subcontract.

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**3.12. Subcontracting.** Subcontractor will not engage a lower tier subcontractor to perform all or any part of Subcontractor's Services under this Subcontract without Vigor's prior written approval, which, as long as Subcontractor gives Vigor reasonable advance written notice of the proposed engagement (together with the names, locations and other relevant details of those lower tier subcontractors that Subcontractor proposes to use to perform Services in connection with the Work), Vigor will not unreasonably withhold, condition or delay its approval. If Vigor authorizes Subcontractor to retain a lower tier subcontractor to perform any Services, that authorization is contingent on and Subcontractor must ensure that lower tier subcontractor complies with each of the following conditions: (a) Subcontractor's contract with each such lower tier subcontractor must state that (i) Vigor is an intended third party beneficiary of that contract and Vigor has the right to assume and/or enforce Subcontractor's rights under that subcontract; (ii) it is subject in all respects to the Master Subcontract, including the Prime Contract and the Flow Down Clauses; and (iii) subcontractor will comply with (A) any trademark, copyright, patent, or other intellectual property usage requirements in the Master Subcontract, the Order, or otherwise; (B) any confidentiality requirements or publicity restrictions in the Master Subcontract; and (C) all other provisions of the Master Subcontract; and (b) Vigor's authorization of Subcontractor's engagement of a lower tier subcontractor will not release Subcontractor from any of its obligations under the Master Subcontract. Upon Vigor's request, Subcontractor will provide Vigor with a copy of Subcontractor's contract(s) with each of its lower tier subcontractors (and Subcontractor may redact cost and price information from those copies). If Subcontractor breaches any contract with a lower tier subcontractor and if Vigor elects to enforce Subcontractor's rights under that contract, Subcontractor will, promptly upon Vigor's request, deliver to Vigor an un-redacted copy of those contracts and of all other documents and substantive written communications to and/or from Subcontractor that Vigor needs or would be likely to need to enforce Subcontractor's rights under each of those contracts.

**3.13. Subcontractor's Resources.**

(a) *Generally.* Subcontractor will (i) ensure that each of its Resources has all permits, licenses, work authorizations, and security clearances required to perform the Services; (ii) select and supervise the performance of its Resources; (iii) use its best efforts not to reassign its Resources; (iv) use only adequately trained Resources to perform the Services; and (v) maintain a sufficient labor pool to supply the Services and complete the Work in accordance with the work schedule. If payment is to be made to Subcontractor on a T&M or CP basis and if Subcontractor replaces any of its Resources before completion of the Work for any reason, Subcontractor will, at no cost to Vigor, ensure an effective transition so that each replacement is qualified and knowledgeable about the purpose, status, issues and requirements of the Work before Subcontractor begins charging for the Services of that replacement. If a Resource ceases to perform due to illness, resignation or any other reason, Subcontractor will promptly provide a substantially equivalent replacement. In addition, Subcontractor does not and will not discriminate in employment opportunities or practices on the basis of race, color, religion, sex, national origin, marital status, age, sexual orientation, gender identity, disability, veteran, or current or future military status or any other characteristic prohibited by law and will ensure that its Resources do not do so in their interactions with Vigor's or the Government's employees and independent contractors.

(b) *Prevailing Rate of Wage.* When required by the Prime Contract or applicable law, Subcontractor will comply with any prevailing rate of wage laws applicable to the Work.

(c) *Physical Access.* Subcontractor will ensure that its Resources who work at any location owned or controlled by Vigor, the Government, or any of their subcontractors, (i) at all times comply with the relevant safety and security guidelines for that location; (ii) keep the premises free from debris and unsafe conditions; (iii) take reasonable precautions to protect Subcontractor's and the Government's equipment and other personal property, and the equipment and other personal property of others, from damage caused by Subcontractor's operations. Subcontractor acknowledges that the Work may at times require the joint occupancy, by Subcontractor and others who are also working on the Project, of the job

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site or other facilities. Subcontractor will coordinate its Work with Vigor's work and the work of Vigor's other subcontractors and the Government. Subcontractor will immediately advise Vigor of any unreasonable interference by Vigor, the Government, or others.

(d) *Access to Computer Network.* If any of Subcontractor's Resources are permitted to access Vigor's or the Government's computer network, Subcontractor agrees those Resources will (i) do so only for the purpose of performing the Services for the benefit of Vigor and not for any other purpose; (ii) not access any information that is confidential or proprietary to Vigor or the Government, or any of their respective Affiliates, unless the Resource has a "need to know" in order to perform Subcontractor's obligations under an Order; (iii) not disclose any of that confidential or proprietary information to any other person other than to Vigor, the Government's and/or Subcontractor's other Resources with a "need to know" in order to perform Subcontractor's obligations under an Order; (iv) except for computer code designed to prevent unauthorized use of Subcontractor's Software Deliverables, not knowingly introduce any viruses, worms, time bombs, time locks, drop dead devices, traps, access codes, trap door devices or any other code that is designed to disrupt, disable, erase, alter, harm or otherwise impair Vigor, the Government, or any of their respective computer networks; and (v) not surreptitiously collect, transfer or disseminate information about Vigor's or the Government's use of the Services, any Deliverables or any Source Documents, or about Vigor, its Affiliates, the Government or any of their customers, suppliers, employees or businesses.

(e) *No Relationship between Vigor and Subcontractor's Resources.* Neither Subcontractor nor its Resources are or will be employees of Vigor, and nothing in the Master Subcontract or any Order creates or is intended to create any employment or other relationship between Vigor and those Resources. Subcontractor understands that neither Subcontractor nor its Resources will be eligible to participate in or receive any benefit from any benefit plan or program available to Vigor's employees. Vigor will not provide workers' compensation coverage for Subcontractor or its Resources, and will not withhold or pay any federal, state or local income taxes (domestic or foreign), FICA, Medicare, unemployment insurance, workers' compensation insurance, or other employment benefit taxes or assessments on account of Vigor's payments to Subcontractor under this Subcontract. Subcontractor will have sole responsibility for the payment of all applicable taxes and withholdings with respect to compensation paid to Subcontractor and its Resources, and will indemnify, defend and hold harmless Vigor from Subcontractor's breach of any of these obligations.

**3.14. Information Required by Government.** In addition to the information to be provided by Subcontractor under the Master Subcontract or any Order, Subcontractor will provide, at no additional cost to Vigor, and in a prompt and timely fashion so as not to disrupt or delay Subcontractor's performance of the Work or Vigor's obligations under the Prime Contract, any and all additional reasonable information relating to the Project or the Work that is required by the Government or by applicable law

**3.15. Guaranty of Continuing Supply; Notice of Obsolescence.** Subcontractor will comply with CDRL C.16 (Diminishing Manufacturing Source and Materials Shortages (DMSMS)) of the Prime Contract with respect to end item Deliverables. In addition, if Subcontractor learns that any of its vendors or lower tier subcontractors intend to stop supplying any part or component used or to be used in any Deliverables, or to stop performing any Services included in the Work, Subcontractor will notify Vigor and will work with Vigor to find a replacement vendor who will provide those same (or with Vigor's or the Army's consent, equivalent) parts and components and Services at the same or a better price.

**3.16. Software Deliverables.** If the Deliverables include any Software, Subcontractor will (a) provide or obtain from others the maintenance and support Services required by the Prime Contract for that Software, including bug fixes, upgrades and updates; (b) ensure that Software does not contain (and will remain free from) any computer code that is designed to: (i) disrupt, disable, erase, alter, harm, or otherwise impair in any manner the operation of the Software or any other software, firmware, files, data, hardware, computer software or networks (sometimes referred to as "viruses" or "worms"); (ii) disrupt, disable, erase, alter, harm, or otherwise impair in any manner the operation of the Software based on the elapse of a period

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of time, exceeding an authorized number of copies, users or servers or the advancement to a particular date or other numeral (sometimes referred to as "time bombs," "time locks," or "drop dead" devices); (iii) permit Subcontractor or its agents to access the Software to disable or impair in any way its operations (sometimes referred to as "traps," "access codes" or "trap door" devices) or any other similar harmful, malicious or hidden procedures, routines or mechanisms that would cause that Software to cease functioning or to damage or corrupt data, storage media, programs, equipment or communications, or otherwise interfere with the users' operations, including Trojan horses; or (iv) perform any functions other than those specified in the documentation for that Software; or (c) will notify Vigor if the Software is subject to an open source license that requires the delivery of the Source Code upon delivery of the executable Software. In addition, if and to the extent any Software does not qualify as commercial off-the-shelf software, Subcontractor will use its best efforts either to deliver the Source Code for that Software to Vigor or to deliver that Source Code to a mutually agreeable third party escrow agent.

**3.17. Marking Requirement.** Subcontractor will affix to each of its Deliverables and to the Source Documents the legend(s) permitted in Part III of Appendix B to the License Agreement and in the Prime Contract, and Vigor will not remove any such legend(s).

**3.18. Payment and Performance Guarantee.** To secure Subcontractor's performance of the Work described in each Order, Subcontractor will, in addition to the grant of the security interest described in the License Agreement, provide the payment and performance guarantee(s), if any are referenced in that Order.

#### **4. Warranties.**

##### **4.1. Design; Performance of the Vessel.**

(a) *Subcontractor's Design and Compliance Warranty.* Subcontractor represents, warrants, and covenants to Vigor as of the Effective Date, and will be deemed to have reaffirmed on each subsequent date that Subcontractor delivers each Project IP Deliverable to Vigor, that Vessels built in accordance with the Project IP will meet the technical requirements of the Army Purchase Technical Descriptions (APTD) Specifications. This warranty will continue until the later of (a) 18 months following completion of the Extended Acceptance Trials ("XAT") performed in accordance with Section C.24.7 of the Prime Contract; or (b) the date all design issues and design deficiencies discovered during the Government's post-XAT testing of the Prototype conducted in accordance with Attachment 0015 to the Prime Contract have been resolved to the Government's satisfaction and are no longer outstanding.

(b) *Remedies.* Vigor will give Subcontractor written notice of any breach of the warranty in Section 4.1(a) above within ten (10) business days after Vigor's discovery of the breach. Subcontractor will: (i) at Subcontractor's cost, modify the Project IP to satisfy the warranty in Section 4.1(a) above; and (ii) notwithstanding Section 14 (Limitation of Liability) below, reimburse Vigor for all reasonable costs and expenses directly incurred or suffered by Vigor in the implementation of that modified Project IP in Vessels that have been delivered or will be delivered to the Army and for any damages Vigor pays the Army as a direct result of Subcontractor's breach of a warranty in Section 4.1(a), in an aggregate amount up to but not greater than \$10 million.

(c) *Exceptions and Exclusions.* BMT's warranty in Section 4.1(a) above will not apply if and to the extent the Prototype's failure to meet the technical requirements in the APTD Specifications was directly caused by: (i) Vigor's failure to construct the Prototype in accordance with the Project IP; or (ii) an unauthorized modification of the Project IP or the Prototype by Vigor, by the Government, or by any other person other than Subcontractor and Subcontractor's agents; or (iii) the failure of any third party parts, components or equipment specifically identified in the relevant Project IP to comply with the manufacturer's written specifications or warranty for those goods; or (iv) a change imposed by Vigor despite Subcontractor's Objection in accordance with Section 7.2(a). For the avoidance of doubt, the Parties expect that the Project IP will evolve, and Vigor acknowledges that a modification to the Project IP made by

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Subcontractor will not, in and of itself, constitute an admission by Subcontractor of a breach of its warranty in Section 4.1(a).

**4.2. Other Work.**

(a) *Subcontractor's General Warranty of Workmanship.* Subcontractor warrants that upon delivery or performance, the Work complies with the Specifications and with the standards in Subcontractor's industry and is free from defects in material and workmanship. The warranties in this Section will survive the delivery of the Deliverables and the performance of the Work and will continue for the Warranty Period described in the Order or in the Prime Contract.

(b) *Remedies.* Vigor will give Subcontractor notice of any breach of the warranty in Section 4.2(a) within a reasonable time after discovery. Subcontractor will, at Vigor's election but without cost to Vigor or the Government promptly re-perform the defective Services and correct or replace any defective Deliverables or Source Documents. The warranty period for any such re-performed, corrected or replaced Work will be co-extensive with the Vigor's obligations to the Government.

**4.3. Title.**

(a) *Subcontractor's Warranty of Title.* The Deliverables are and will be free from all liens, encumbrances and claims of any person, and Subcontractor will, as a prerequisite for each payment, deliver to Vigor, lien, bond, retainage, and claim waivers and affidavits from Subcontractor and its lower-tier subcontractors and suppliers using the appropriate form in Appendix G. The warranties described in this Section will survive the delivery of the Deliverables and the performance of the Work. Without limiting the preceding, Subcontractor will deliver to Vigor assurances from SunTrust Bank and any other persons with security interests in the Project IP regarding Vigor's rights under this Subcontract and the License Agreement, in a form reasonably satisfactory to Vigor.

(b) *Remedies.* If Subcontractor or any of its lower tier subcontractors or suppliers files a lien, makes a claim against any bond or retainage, or asserts any other claim against Vigor, the Government, or the Project, Subcontractor will, within ten (10) business days, satisfy, remove or discharge those liens and claims at its own expense by posting a bond, making payment, or otherwise. Vigor may elect to pay for any portion of the Work by delivering to any lower-tier subcontractor or supplier that has notified Vigor of its right to assert a lien or a claim against Vigor, the Government, or the Project, a check made payable jointly to Subcontractor and that subcontractor or supplier, and any such payment will be deemed to have been paid to Subcontractor.

**4.4. Source Documents.**

(a) *Warranty.* Subcontractor warrants that it has delivered Source Documents in a form that complies with CDRL 16 of the Prime Contract (Diminishing Manufacturing Source and Materials Shortages) and is otherwise reasonably acceptable to Vigor and that those Source Documents are true, accurate and complete. The warranties will survive the delivery of the Source Documents and the performance of the Work. Subcontractor will update the Source Documents during the term of the relevant Order.

(b) *Remedies.* If Subcontractor breaches Section 4.4(a) above, Subcontractor will promptly, at Vigor's request, deliver the Source Documents.

**5. Payment.**

**5.1. Price.** Vigor will pay Subcontractor the Price described in each Order for the satisfactory performance of the Work covered by that Order. Subcontractor assumes the risk of increases in wages and the price of material after the date of an Order and will not be entitled to any additional payment for any such increases. For FFP Orders, Subcontractor will, within 15 days after the Parties enter into any

such Order, deliver to Vigor (as indicated in that Order) either schedule of values or a milestone schedule that is acceptable to Vigor for the Work reflected in that Order.

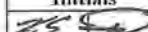
**5.2. Invoices.**

(a) *T&M and CP Orders.* If an Order states that payment is to be made on a T&M or CP basis, (i) Subcontractor will invoice Vigor no more frequently than as described in the Payment Terms section of that Order or the relevant ATP related to that Order, (ii) invoices will describe in reasonable detail the Deliverables that have been provided, the Services that have been performed, and the Subcontractor Resource(s) who performed the Services, and the calculation of the amount due and owing (e.g., for T&M Orders, the actual productive hours multiplied by the applicable rate in the Rate Sheet, plus any itemized reimbursable expenses, and for CP Orders, the actual cost determined in accordance with the applicable Flow Down Clauses, plus the agreed fee); and (iii) each invoice must include all supporting documentation, including vendor invoices, timecards, travel expense reports, and receipts. The rates stated in the Rate Sheet for a T&M Order will continue until Subcontractor has performed all of its obligations under that Order. Subcontractor will promptly notify Vigor if Subcontractor has reason to believe at any time that it will not be able to complete the Work for maximum amount stated in any such T&M or CP Order or in accordance with the work schedule described in that Order. Subcontractor will not invoice Vigor an amount greater than the maximum amount stated in any such Order unless Vigor's project manager approves a change order under Section 7 (Change Control) below before those additional costs are incurred; however, Subcontractor will not be required to perform additional Work until Vigor's project manager approves that change order.

(b) *FFP Orders.* If an Order states that payment is to be made on a FFP basis, Subcontractor will invoice Vigor in accordance with the relevant schedule of values, milestone schedule or other progress billing metric applicable to that Order, and each such invoice will describe in reasonable detail progress in relation to the schedule of values, milestones, and/or other billing metric that Subcontractor has achieved.

(c) *All Invoices.* All invoices submitted by Subcontractor must (i) reference the Order to which it relates; and (ii) be in such form so as to entitle Vigor to properly make a progress payment request for the amount of the invoice to the Government in accordance with FAR 52.232-16, Progress Payments, and to receive payment in response to such request within 30 days of the date upon which it was submitted to the designated Government billing office. In addition, Subcontractor will not invoice Vigor for, and Vigor will not be obligated to pay for, any goods that Subcontractor expects to store for more than 60 days.

**5.3. Progress Payment and Payment Terms.** Unless expressly provided otherwise on the face of an Order or an ATP that has been signed by an Authorized Representative of Vigor, Vigor will pay Subcontractor, within 45 days of the first day of the month, the undisputed amount due and owing under each invoice received by Vigor before the 20<sup>th</sup> day of the prior month. Notwithstanding the preceding or the payment terms in an Order or any ATP, for any Work performed during the Protest Period, Vigor will pay only one-half of the amount of each undisputed invoice for that Protest Period Work in accordance with the Payment Terms in the Order, and will pay the remaining balance of all such invoices only if and when any and all Protests are fully and finally determined to be unsuccessful and the Prime Contract is determined to be valid, binding, and enforceable in accordance with its terms. If for any reason any Protest is successful and as a result the Prime Contract is terminated or modified in any way, the remaining balance of all such invoices will be cancelled and Vigor will not pay the balance of those invoices. Unless otherwise provided in the Order, all sums are payable in United State Dollars. Payment to Subcontractor for any Work does not constitute or imply Vigor's acceptance of all or any part of that Work. For Vigor's unexcused failure to pay any invoice when due, Vigor will pay to Subcontractor a late fee equal to one percent (1.0%) per month of the unpaid balance from the date payment was due until it is paid in full.

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5.4. **Taxes.** Unless expressly provided otherwise in the Order, the Price described in each Order includes all taxes (other than income taxes), licenses, and fees that may be charged by any governmental authority upon the Work or the transaction described in the Order. Vigor shall not be responsible for any taxes incurred by Subcontractor as a result of the payments it receives from Vigor hereunder. If Subcontractor breaches these obligations, Subcontractor will indemnify, defend and hold harmless Vigor from and against any resulting government penalties and interest.

5.5. **Expenses.** Except as expressly provided otherwise in an Order, Subcontractor will bear all costs of performing its obligations under that Order, including labor, overhead, and supplies.

5.6. **Setoff.** If Subcontractor breaches the Master Subcontract, any Order, or the License Agreement, and provided Vigor has complied with the applicable provisions of Section 20 resulting in a final and binding Arbitration Award, Vigor will have the right to set off and deduct the amount of Vigor's Arbitration Award from any amounts Vigor owes Subcontractor under those agreements.

5.7. **Discounts; Rebates, Credits and Refunds.** Subcontractor will deduct from each T&M or CP Order all trade discounts, rebates, credits and trade credit offsets, and refunds earned by or otherwise payable to Subcontractor for the Work reflected in that Order, and, if applicable, will apply the deduction before applying any markup.

5.8. **Recordkeeping and Audits.** Subcontractor will keep adequate records of all Services performed, Deliverables delivered, invoices issued, and payments received. Vigor and the Government will have the right, subject to reasonable security and access restrictions, at any time during ordinary business hours, to audit (or to cause its designated representative to audit) Subcontractor's records with respect to Subcontractor's compliance with all Orders and with respect to any amount payable to Subcontractor under each Order, so long as Vigor provides and/or causes the Government to provide reasonable notice of its intent to do so. Those audits will be conducted at Vigor's or the Government's expense; however, if an audit discloses that Vigor overpaid Subcontractor, Subcontractor will refund to Vigor the amount of that overpayment and, if that audit discloses that Subcontractor invoiced Vigor for five percent or more of the amount actually due to Subcontractor during the period covered by the audit, Subcontractor will also reimburse Vigor for the costs of that audit.

5.9. **Final Payment of each Order.**

(a) **Application.** Promptly following the Government's acceptance of all of Subcontractor's Work under an Order (and if expressly stated, under an Authorization to Proceed), Vigor will process Subcontractor's application for final payment of that Order or ATP without delay.

(b) **Requirements.** As a condition to Vigor issuing final payment under an Order or ATP, Subcontractor must submit to Vigor, (i) a *Final Release of Claims, Assignment of Refunds, Rebates, Credits and Other Amounts* using the form in Part 2 of Appendix G to this Master Subcontract (the "**Final Payment Release**") with supporting documentation from each of Subcontractor's suppliers and lower-tier subcontractors; (ii) a *Patent Report* from Subcontractor that identifies all inventions that Subcontractor or any of its lower tier subcontractors created or discovered in connection with the Work, the inventor(s) of each such invention, and any other information required to be included in a patent application, each in a form mutually acceptable to both Parties, and (iii) any documentation or requests for information required by the Prime Contract to close out that Order.

(c) **Time of Payment.** Except as expressly provided in Section 5.3 above and/or Section 5.9(a) above, Vigor will make final payment of the balance due under each Order in accordance with the payment terms in that Order.

(d) **Effect.** Subcontractor's acceptance of the final payment identified in the Final Payment Release in connection with an Order waives Subcontractor's right to assert a claim for additional payment under that Order, but it does not waive Subcontractor's right to assert claims against Vigor for any

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other breach of that Order or release Subcontractor from any claim by Vigor for breach of that Order or this Master Subcontract.

**6. Intellectual Property Ownership Rights.**

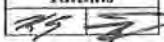
**6.1. Ownership.** As between Vigor and Subcontractor, and except as expressly provided otherwise in the Prime Contract and this Subcontract, Subcontractor will own the Intellectual Property Rights it creates or develops in connection with the Project, and Vigor will own the Intellectual Property Rights it creates or develops in connection with the Project. To the extent permitted by and consistent with the Prime Contract, Subcontractor will affix to each of its Deliverables appropriate legend(s) from Part III of Appendix B to the License Agreement.

**6.2. Employees and Subcontractors.** Subcontractor will require each of its Resources that perform Services in connection with the Work to execute appropriate agreements to ensure that they do not have any ownership claims in the Work or in any Intellectual Property Rights related to the Work, and to require them to cooperate with Subcontractor and Vigor in connection with Subcontractor's obligations under this Section 6.

**6.3. Title, Liens, Claims and Encumbrances; Compliance with Law and Third Party Contracts.** Except as expressly provided in Section 6.1 above, Subcontractor represents and warrants that upon delivery of the Deliverables described in Section 6.1 to Vigor, Vigor will own good and marketable title to those Deliverables. Subcontractor's performance of its obligations under any Order will not breach or violate the rights of any other person, and Vigor may use the Deliverables and the Source Documents, and accept the Services, without payment to any other person. Vigor's use of the Deliverables and the Source Documents, and its acceptance of the Services, in the form delivered or provided by Subcontractor for the purposes contemplated by an Order do not and will not violate any law, regulation, or order of any national, state, or local governmental authorities, whether domestic or foreign, or interfere with any third party contracts.

**6.4. License; License Back.** Vigor's right to use the Project IP is described in the License Agreement. Subject to the restrictions below, Vigor grants to Subcontractor, for the term of each Order, a limited, nonexclusive, world-wide license to copy, modify, and use the Vigor Developments and any other Vigor Intellectual Property Rights as necessary for Subcontractor to perform its obligations under any Order. Subcontractor will not sublicense any of its rights with respect to the Vigor Developments or any other Vigor Intellectual Property Rights without Vigor's express written consent, and then only if the proposed sublicensee expressly agrees to comply with and be bound by the provisions in this Section 6. Nothing in this Section 6 or elsewhere in the Master Subcontract will be construed as granting to or conferring upon Subcontractor any right, title, interest, or license in the Vigor Developments or any other Vigor Intellectual Property Rights except as expressly described in this Section 6.4.

**6.5. Restrictions.** Except as necessary to perform its obligations under an Order, Subcontractor will not: (a) copy, modify, or use any Vigor Developments or any other Vigor Intellectual Property Rights; (b) disclose any Vigor Developments or any other Vigor Intellectual Property to any other person; (c) grant a license to or otherwise permit any other person to use any Vigor Developments or any other Vigor Intellectual Property; or (d) disassemble, decompile or reverse engineer any Vigor Developments or any other Vigor Intellectual Property. Subcontractor will be responsible if any of its Affiliates' or agents' employees, agents, subcontractors breach or otherwise fail to comply with any of these restrictions.

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7. Changes.

7.1 *Changes Initiated by and Disputes Involving the Government.*

(a) If the Government changes any goods or services to be provided under the Prime Contract and that change affects the Work, the Order related to that Work will be amended as follows: Subcontractor will be bound to Vigor, and Vigor will be bound to Subcontractor, to the extent Vigor is bound to the Government by the terms of the Prime Contract, and by the changes the Government makes to the Prime Contract, and all procedures and resulting decisions, findings, determinations, awards made under the Prime Contract. Vigor will in good faith determine Subcontractor's share of any adjustments for those changes and will deliver to Vigor's determination of Subcontractor's share and the basis for that determination ("*Vigor's Statement*"). Vigor's determination in the Vigor Statement will be binding on Subcontractor unless within five (5) business days after Subcontractor's receipt of Vigor's Statement, Subcontractor notifies Vigor in writing that Subcontractor disputes Vigor's determination reflected in Vigor's Statement (the "*Subcontractor's Notice of Dispute*"), and within 30 days after Vigor's receipt of Subcontractor's Notice of Dispute (or any shorter time required by the Prime Contract), Subcontractor must deliver to Vigor a statement describing in reasonable detail Subcontractor's calculation of Subcontractor's share of any adjustments for those changes, together with supporting data and documentation (collectively, the "*Subcontractor's Statement*").

(b) If Subcontractor timely disputes Vigor's Statement, or if any other dispute or claim arises between Vigor and the Government related to Subcontractor or its Work, or if any dispute or claim arises between Vigor and Subcontractor caused by the Government or for which the Government is or may be responsible, both Parties will be bound by the process, procedures and decision under the Prime Contract.

(c) If Subcontractor asks Vigor to submit a claim to the Government on behalf of or for the benefit of Subcontractor, Vigor and Subcontractor will work together in the submission of the Subcontractor claim, Subcontractor will furnish all documents, statements, witnesses and other information reasonably requested by Vigor, and Subcontractor will reimburse Vigor for its reasonable costs and expenses related to the pursuit of the Subcontractor claim. Alternatively, Vigor may, in its sole discretion, permit Subcontractor to prosecute Subcontractor's claim against the Government in Vigor's name, and in that case, Subcontractor will have full responsibility for the preparation and presentation of Subcontractor's claim, will bear all expenses related to Subcontractor's claim, including reasonable attorney fees, and will indemnify Vigor for any damage or loss it may incur as a direct result of Subcontractor's claim. Subcontractor will be bound by Vigor's determination, made in good faith, as to the submission of a claim on behalf of Subcontractor, as to authorization to Subcontractor to prosecute a claim in Vigor's name, as to the apportionment of any amounts received from the Government on behalf of claimants, including Vigor, Subcontractor, and Vigor's other subcontractors whose work is affected by any act or omission of the Government, and Subcontractor will be bound by the final decision regarding any such claim, will not take (and if applicable, will suspend) any other action with respect to Subcontractor's claim, and acknowledges that Vigor will not be liable to Subcontractor for an amount greater than Subcontractor's interest in the amount payable by the Government to Vigor.

7.2 *Changes Initiated by Vigor and Disputes not Involving the Government.*

(a) Vigor's project manager may at any time, without invalidating an Order, change the Work to be performed under that Order that Vigor deems desirable, (e.g., Vigor may change the Work described in, add additional Work to, or delete Work from, that Order) by submitting a written change order to Subcontractor that describes the scope-related changes to the Work and any changes to the work schedule, including changes to the description of the Deliverables or Services, the Specifications or any other functional or technical requirements, the acceptance criteria, or any other scope-related additions, deletions or revisions in that Order. Except as provided otherwise in Section 7.1 (Change Orders Initiated by the Government) above, in Section 16 (Suspension or Termination of Orders) below, or expressly provided

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elsewhere in this Subcontract, Vigor shall not materially reduce the scope of Work below the level described in the relevant Order without Subcontractor's prior written approval. Subcontractor will be deemed to have accepted that change order unless, within five (5) business days after Subcontractor's receipt of a change order submitted by Vigor, Subcontractor fails to object in writing to that change order ("**Subcontractor's Objection**"), and within 14 days after Vigor's receipt of Subcontractor's Objection, Subcontractor must deliver to Vigor a statement describing in reasonable detail the basis for Subcontractor's Objection. Alternatively, Vigor may direct Subcontractor to prepare a draft of the change order and upon Subcontractor's receipt of any such direction (provided the change doesn't materially change the nature of the Deliverables or the Services described in the relevant Order, exceed Subcontractor's capacity to perform, or reduce the amount of Work below that otherwise permitted by this Subcontract), Subcontractor will, at no cost to Vigor, promptly prepare and submit to Vigor's project manager a draft change order reflecting Vigor's requested changes and proposing reasonable adjustments, if any, to the Deliverables or Services, the work schedule and delivery or milestone completion dates for the Services and any Deliverables, and/or the Price for that Order, as applicable, which Vigor may accept or reject in its sole discretion. Vigor will be bound by any such proposed change order prepared by Subcontractor only if and when Vigor's project manager signs that change order.

(b) If Subcontractor's project manager fails to object in writing to a change order submitted by Vigor under Section 7.2(a), or if Vigor's project manager signs and accepts a draft change order prepared by Subcontractor under Section 7.2(a), the Order to which that change order relates will be amended accordingly. If Vigor's project manager does not accept any aspect of a draft change order prepared by Subcontractor, (i) Vigor may direct Subcontractor to proceed in accordance with the scope changes in the proposed change order and the Parties will negotiate in good faith to resolve any disputes about the work schedule, the delivery or milestone completion dates or the impact on the Price; and/or (ii) Vigor may withdraw its request for a change order and enforce the current form of the Order. If Vigor directs Subcontractor to proceed in accordance with the scope changes requested in a proposed change order, Subcontractor will perform that Work, and in that case, either Party may refer any issues related to the work schedule, the delivery, schedule of values, or milestone completion dates, and/or the Price for that Order, to arbitration in accordance with Section 20 below.

**7.3 Notice Deadline for Changes/Claims.** Subcontractor must provide notice to Vigor within five business days (or any shorter time required by the Prime Contract) of the date BMT first knows or reasonably should know of the occurrence of any interruption, any extra Work, any change in the scope of any Work, or the failure of any assumptions or conditions Subcontractor identified in reasonable detail in the Work Order, any delay, hindrance, disruption, dispute, loss of efficiency or any other event or instance that Subcontractor believes entitles Subcontractor to additional compensation and/or an extension of time ("**Subcontractor's Notice of Claim**"), and within 14 days after Vigor's receipt of Subcontractor's Notice of Claim (or any shorter time required by the Prime Contract), Subcontractor must deliver to Vigor a statement describing in reasonable detail the basis for the amount of compensation claimed and for the period of any extension of time, together with supporting data and documentation (collectively, a "**Statement of Claim**"). If Subcontractor fails to timely provide its Statement of Claim, it will be deemed to have waived its claim.

**7.4 Work Continuation and Payment.** Unless Vigor expressly agrees otherwise in writing, Subcontractor will carry on the Work described in a Work Order in accordance with Vigor's written instructions pending resolution of any dispute under this Section, provided Vigor is not in default of its payment obligations under that Order.

## **8. Indemnification.**

**8.1 Definition of Loss and Losses.** "**Loss**" or "**Losses**" includes: (a) all reasonable attorney fees incurred by a Vigor Indemnatee (defined below) or by a Subcontractor Indemnatee (defined below) (in either case, an "**Indemnatee**") in defense of any claim that is covered by or subject to indemnification under this Section 8, whether incurred prior to, at trial or any other proceeding and in any

appeal or other post judgment proceeding, and whether or not paid or to be paid; and (b) all losses and damages, including incidental, consequential, punitive and exemplary damages, paid or payable to an unrelated person, including for property damage, for infringement, and for personal injury, sickness and death; and (c) all interest, costs, fines, taxes, premiums, assessments, penalties, and expenses paid or payable to an unrelated party that are covered by or subject to indemnification under this Section 8; in each case, subject to the applicable limitations of liability in Section 14 below.

**8.2 Subcontractor's Indemnification Obligations.** Subcontractor will indemnify, defend, and hold harmless Vigor and their respective officers, directors, shareholders, employees and agents (the "**Vigor Indemnitees**") from and against all Losses arising from or related to a claim asserted against the Vigor Indemnitees directly or indirectly by any unrelated party (a) alleging that the Deliverables, the Services, or their use infringes or misappropriates any Intellectual Property Right of that other person; or (b) related to any: (i) defect in the Deliverables or Services provided by Subcontractor or any of its agents; (ii) negligent act or omission by the Subcontractor or any of its agents; (iii) breach of any representation, warranty or covenant in an Order or elsewhere by Subcontractor; (iv) violation of any applicable law by Subcontractor or any of its agents; or (v) claim that any of Subcontractor's or its agents' employees, principals, contractors or subcontractors are employees of Vigor; in each case, whether arising from or in connection with a demand, action, regulatory action, lawsuit, proceeding (including without limitation, proceedings under the US Bankruptcy Code), judgment, settlement, appeal or other post judgment proceeding and whether asserted in contract, tort, strict liability or otherwise.

**8.3 Vigor's Indemnification Obligations.** Vigor will indemnify, defend, and hold harmless Subcontractor and its officers, directors, shareholders, employees and agents (the "**Subcontractor Indemnitees**") from and against all Losses arising from or related to a claim asserted against the Subcontractor Indemnitees directly or indirectly by any unrelated party (a) alleging that any materials provided by Vigor, or their use, infringes or misappropriates any Intellectual Property Right of that other person; or (b) related to any: (i) negligent act or omission by Vigor or any of its agents (ii) breach of any representation, warranty or covenant in this Subcontract or elsewhere by Vigor; or (iii) violation of any applicable law by Vigor or any of its Affiliates; in each case, whether arising from or in connection with a demand, action, regulatory action, lawsuit, proceeding (including without limitation, proceedings under the US Bankruptcy Code), judgment, settlement, appeal or other post judgment proceeding and whether asserted in contract, tort, strict liability or otherwise.

**8.4 Exceptions.** The indemnification obligations described above will not apply to a Loss to the extent that Loss was caused by: (a) the negligent act or omission of an Indemnitee; (b) an Indemnitee's breach of its representations, warranties or covenants in an Order or elsewhere; (c) an Indemnitee's intentional misconduct; or (d) an Indemnitee's violation of any applicable law. In addition, Subcontractor's indemnification obligations will not apply to a Loss to the extent that Loss was caused by Vigor's modification of the Deliverables without Subcontractor's consent (other than those modifications contemplated by the Parties).

**8.5 Procedures.** The duty of a Party (the "**Indemnitor**") to indemnify an Indemnitee of the other Party under this Section 8 or elsewhere in this Subcontract is subject to the Indemnitees' compliance with each of the following conditions: (a) the Indemnitees promptly notify the Indemnitor of the Loss (except that the Indemnitees' failure to promptly notify the Indemnitor of a Loss will not limit, impair or otherwise affect the Indemnitees' rights under this Section 8 unless the Indemnitor is prejudiced by that failure, and then only to the extent of the prejudice); and (b) the Indemnitees give the Indemnitor full and complete authority (including without limitation, settlement authority) and reasonable assistance (including without limitation, reasonable access to information in the Indemnitees' possession) for the defense. However, the Indemnitor's rights under subsection (b) are contingent on its agreement that it will not settle

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any claim without the Indemnitees' prior written consent unless that settlement includes a full and final release of all claims against the Indemnitees and does not impose any obligations on the Indemnitees.

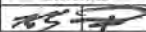
**8.6 Additional Remedies.** Subject to the applicable limitation of liability in Section 14, if all or any part of the Work is held in any infringement suit to infringe the Intellectual Property Right of another person, and its use is enjoined, Subcontractor will, at its own expense obtain a license for Vigor, its subcontractors, and the Government to continue using those Deliverables as contemplated in the Master Subcontract, and pay on their behalf any fee that may be charged in connection with that license. If a license cannot be obtained on commercially reasonable terms, Subcontractor will modify, replace or re-perform the Deliverables and Services so they become non-infringing while giving substantially equivalent performance and will reimburse Vigor for the costs Vigor has reasonably and directly incurred as a result of any such modification, replacement or re-performance, along with testing and training that is functionally equivalent with the original testing and training. Vigor's remedies for breach of this Master Subcontract are not exclusive and are in addition to all other rights and remedies available under this Master Subcontract or applicable law.

## **9 Confidentiality.**

**9.1 Confidentiality.** The term "**Confidential Information**" means all information of and about the Project, Subcontractor, Vigor or the Government, their respective employees, advisors, and suppliers, whether in oral, written, or other tangible or intangible form, (including, business plans, financial plans and information, computer programs, technical drawings, know-how, inventions, product development plans, preliminary product descriptions and specifications, customer information, forecasts, strategies, trade secrets and other similar information), except that the term "Confidential Information" will not include any information that the party disclosing the information (the "**Disclosing Party**") can demonstrate: (a) is or subsequently becomes publicly available without the party receiving the information's (the "**Receiving Party**") breach of any obligation owed to the Disclosing Party; or (b) any of the following as evidenced by the Receiving Party's written records: (i) it was known to the Receiving Party before the Disclosing Party's disclosure of that information to the Receiving Party; (ii) it became known to the Receiving Party from a source other than the Disclosing Party without a breach of this Subcontract; (iii) it is independently developed by the Receiving Party's personnel.

**9.2 Obligations.** The Receiving Party will maintain the Confidential Information in confidence and will not use the Confidential Information for any purpose except to perform its obligations hereunder. The Receiving Party agrees to use the same degree of care in protecting the Confidential Information as it uses to protect its own confidential and proprietary information from unauthorized use or disclosure, but in no event less than reasonable care. In addition, the Receiving Party agrees that: (a) it will not reproduce the Confidential Information in any form except as required to accomplish its obligations under this Subcontract; and (b) except as expressly permitted in Section 9.3 below, it will only disclose the Confidential Information to its directors, officers, employees, professional advisors and/or contractors who have a need to know such Confidential Information in order for the directors, officers, employees, professional advisors and/or contractors to perform their duties under this Subcontract and only if those directors, officers, employees, professional advisors and/or contractors have executed a non-disclosure agreement with the Receiving Party with terms no less restrictive than the non-disclosure obligations contained in this Section 9.

**9.3 Compelled Disclosure.** If the Receiving Party is required to disclose any Confidential Information under any subpoena, interrogatory, request for production or other compulsory judicial or administrative process that calls for or may result in the disclosure of any Confidential Information, the Receiving Party will immediately notify the Disclosing Party so the Disclosing Party may seek protection of that Confidential Information if it wishes to do so. Only after giving such notice may the Receiving Party disclose that Confidential Information and then only to the extent the Receiving Party is

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legally compelled to do so. The Receiving Party will immediately notify the Disclosing Party upon discovering any loss or unauthorized disclosure of any Confidential Information.

**9.4 Relief.** The Receiving Party acknowledges that due to the unique nature of the Confidential Information, the Disclosing Party would not have an adequate remedy in money or damages in the event of any unauthorized use or disclosure of its Confidential Information. Therefore, in addition to any other remedies that may be available in law, in equity or otherwise, the Disclosing Party will be entitled to request injunctive relief to prevent such unauthorized use or disclosure of the Confidential Information.

**9.5 Term.** The Receiving Party's obligations under this Section 9 will continue for five (5) years from the date of first disclosure unless the Confidential Information qualifies as a trade secret under applicable law or is subject to Governmental security requirements, and in that case, the Receiving Party's obligations under this Section 9 will continue for as long as that information qualifies as a trade secret or continues to be covered by Governmental security requirements.

**10. Publicity Restrictions.** Subcontractor will not, without Vigor's express written consent: (a) disclose to any person (other than its lenders and business advisors) the existence or monetary value of this Subcontract or any Order; (b) make any public announcement regarding Subcontractor's association with Vigor or the Government in connection with the Project; (c) use Vigor's name or any Vigor trademark, service mark, logo or copyright protected work (whether or not registered) in any of Subcontractor's promotional materials, marketing activities or elsewhere; (d) identify Vigor, the Government, or the Project on their customer list or website (or on any other person's website that identifies Subcontractor) or in any metatags or key words for those websites; or (d) include a hyperlink from any website maintained by Subcontractor to any Vigor website. Vigor expressly consents to Subcontractor and its Affiliates who perform Services or created or create Project IP using the statements in Appendix H, in the manner described in Appendix H, in their promotional and marketing materials and on their websites.

**11. Injunctive Relief.** Subcontractor acknowledges that its breach of Section 3.3 (Substitutions), Section 3.9 (Nonsolicitation), Section 3.15 (Guaranty of Continuing Supply; Notice of Obsolescence), Section 6 (Intellectual Property Ownership Rights), Section 9 (Confidentiality), and/or Section 10 (Publicity Restrictions) of this Master Subcontract will irreparably harm Vigor, and that such harm is not susceptible to accurate measurement for the purpose of calculating money damages. Accordingly, Vigor, in addition to seeking and recovering money damages and other remedies available at law, will, notwithstanding any provision in Section 7 (Change Control) or in Section 20 (Disputes) regarding arbitration, have the right to obtain an injunction or other equitable relief to prevent a breach or threatened breach of such Sections, without the necessity of posting a bond or other security, and Subcontractor irrevocably consents to the jurisdiction of the state and federal courts located in Seattle, Washington, USA, waives any objections that venue is an inconvenient forum, and will not initiate any action against Vigor or any of its Affiliates in any other jurisdiction.

**12. Independent Contractor.** Vigor and Subcontractor are independent contractors, and nothing in this Subcontract creates a joint venture or partnership, establishes a relationship of principal and agent, employer and employee, or any other relationship of a similar nature between the Parties. Neither Party will represent the other Party in any capacity, bind the other Party to any contract, or create or assume any obligation on behalf of the other Party for any purpose whatsoever, except as expressly authorized by this Subcontract. Except as expressly required by this Subcontract, Subcontractor retains sole and absolute discretion as to the manner and means of carrying out its obligations under this Subcontract, and Vigor will have no right or obligation to direct or control Subcontractor's working conditions or activities.

**13. Insurance.** Without limiting Subcontractor's obligation to indemnify Vigor or any of its other obligations under this Subcontract, in addition to any additional insurance requirements in the Order,

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Subcontractor will maintain at its own expense, unless otherwise agreed by the parties, the following insurance:

(a) Workers' Compensation Insurance with statutory limits, and employer's liability insurance with limits of not less than two million US dollars (\$2,000,000), with an Alternate Employer Endorsement (WC 00 03 01) showing Vigor and its affiliates as the alternate employer.

(b) Commercial General Liability insurance with endorsements as necessary to cover liability arising from premises operations, independent contractors, products-completed operations hazard, personal injury, and contractual liability, with a limit of not less than five million US dollars (\$5,000,000) each occurrence and five million US dollars (\$5,000,000) aggregate. This insurance will (i) be written on an occurrence basis; (ii) name Vigor and its affiliates as additional insureds; and (iii) be primary with respect to any insurance or self-insurance programs maintained by Vigor.

(c) Business Automobile Liability Insurance for any auto, including without limitation, owned, non-owned and hired autos, with a limit of not less than two million US dollars (\$2,000,000) per occurrence. This insurance will (i) be written on an occurrence basis; (ii) name Vigor and its affiliates as additional insureds; and (iii) be primary with respect to any insurance or self-insurance programs maintained by Vigor.

(d) An advertising injury endorsement to the Commercial General Liability Insurance policy described above with a limit of not less than five million US dollars (\$5,000,000) per claim.

(e) Professional Liability Insurance with a limit of not less than five million US dollars (\$5,000,000) per claim. Subcontractor warrants that any retroactive date applicable to coverage under this policy precedes the Effective Date, and Subcontractor agrees that it will maintain continuous coverage through an extended discovery period so that claims made during the term of this Subcontract and for two years after its expiration will be covered by this insurance.

(f) An Umbrella Liability policy in an amount not less than five million US dollars (\$5,000,000), covering the acts and omissions of Subcontractor's Resources and agents.

All policies (i) will be written by insurers that are licensed to do business in the state where the Deliverables are to be made, manufactured or created or the Services are to be performed; (ii) will be written by Chubb or ITIC mutual or any equivalent insurance companies or mutuals; (iii) will provide that Vigor will be given 30 days' advance written notice of cancellation or reduction in coverage, (iv) except for the insurance described in Section 13(a), be endorsed to (A) waive subrogation; and (B) be primary with respect to any insurance or self-insurance programs maintained by Vigor. If Subcontractor fails to comply with these insurance requirements within five (5) business days after Vigor has notified it of the failure, Vigor may, but need not, at its election (A) terminate this Subcontract immediately, notwithstanding any notice requirement that would otherwise apply, and recover damages from Subcontractor resulting from that failure; or (B) purchase required insurance coverage and charge the premium to Subcontractor. Any limits specified in this Section may be achieved through a combination of primary and umbrella or excess liability policies. On or prior to the Effective Date, and as the insurance policies expire, Subcontractor will deliver copies of certificates of insurance for each required policy to Vigor at the address for notices and will send a copy of those certificates to: Vigor Risk Management, 5555 N. Channel Avenue, Portland, OR 97217.

#### 14. Limitation of Liability.

**14.1 Exclusions and Limitations.** Except as expressly provided in Section 14.2 below, neither Subcontractor nor Vigor will be liable to the other Party for any punitive, exemplary, special, indirect, incidental or consequential damages (including lost profits, lost business opportunities, loss of use or equipment down time), regardless of the legal theory under which those damages are sought, and even if the Parties have been advised of the possibility of those damages or loss. In the case of Subcontractor,

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Subcontractor's aggregate liability to Vigor for all other damages arising out of or in connection with an Order will not exceed the Design Fees paid or payable by Vigor to Subcontractor under (a) that Order or, if lower, (b) the relevant ATP(s). In the case of Vigor, Vigor's aggregate liability to Subcontractor for all other damages arising out of or in connection with an Order will not exceed the price paid or payable by Vigor to Subcontractor under (a) that Order or, if lower, (b) the relevant ATP(s).

**14.2 Exceptions.** The exclusions and limitations in Section 14.1 above will not (a) apply to damages suffered by a Party to the extent those damages were caused by the other Party's gross negligence or willful misconduct; or (b) limit Subcontractor's liability to Vigor for (i) damages caused by Subcontractor's breach of Section 3.3 (Substitutions) or Section 6 (Intellectual Property Ownership Rights); or (ii) Losses paid or payable by an Indemnitee to a third party under Section 8 (Indemnity).

**15. Notices.** Each notice, consent, request, or other communication required or permitted under this Subcontract will be in writing, including email or regular mail, provided it is sent to the appropriate Authorized Representative; provided, however, that any notice required or permitted under Section 8 (Indemnification) or Section 16 (Suspension or Termination of Orders) must be delivered personally or sent by certified mail (postage prepaid, return receipt requested) or by a recognized US overnight courier, and will be addressed as follows: (a) if to Vigor, to the contact for Vigor set forth in the "Parties" table on the first page of this Subcontract and the relevant Order, along with a copy to Vigor Industrial LLC, Attention: General Counsel, 5555 N. Channel Avenue, Portland, OR 97217 USA; and (b) if to Subcontractor, to the contact for Subcontractor set forth in the "Parties" table on the first page of this Subcontract and the relevant Order. Each notice, consent, request, or other communication will be deemed to have been received by the Party to whom it was addressed (w) when delivered if delivered personally; (x) on the fifth business day after the date of mailing if mailed postage prepaid, certified first class mail, return receipt requested; (y) upon electronic delivery if a business day (or the first business day after delivery if delivery is not a business day); or (z) on the date officially recorded as delivered according to the record of delivery if delivered by overnight courier. Each Party may change its address for purposes of this Subcontract by giving written notice to the other Party in the manner described above.

**16. Suspension or Termination of Orders.**

**16.1 By the Government.** Vigor may suspend or terminate all Orders or any Order by giving Subcontractor the same notice that Vigor receives from the Government if at any time the Government suspends, terminates or substantially modifies the Prime Contract.

**16.2 For Cause.** Vigor may terminate all Orders or any part of any Order, effective immediately, by giving Subcontractor notice, if Subcontractor has breached a material provision of an Order, and that breach (a) is not capable of being cured (which the Parties acknowledge could include certain breaches of Section 9 (Confidentiality)); or (b) if it is capable of being cured, that breach remains uncured for 30 days after Subcontractor receives notice of that breach, except that Vigor will not be obligated to give BMT notice and an opportunity to cure (i) the second breach that occurs within 12 months of a similar breach or (ii) a breach that occurs after BMT ceases to do business.

**17. Survival.** The following will survive and continue in full force and effect after any Order is terminated: Section 3.9 (Nonsolicitation); Section 6 (Intellectual Property Ownership Rights); Section 8 (Indemnification); Section 9 (Confidentiality); Section 10 (Publicity Restrictions); Section 11 (Injunctive Relief); Section 12 (Independent Subcontractor); Section 13 (Insurance); Section 15 (Notices); this Section 17 (Survival); and Sections 20 (Disputes) through Section 27 (Entire Agreement); each other provision of that Order (including in the other Contract Documents) that expressly or by its nature provides for rights, obligations or remedies that extend beyond the expiration or earlier termination of that Order; and all claims that arose before the expiration or earlier termination of this Subcontract.

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**18. Restrictions on Assignment.**

**18.1 By Subcontractor.** Except as expressly permitted in this Master Subcontract or an Order, Subcontractor will not assign any right or otherwise delegate any duty under this Subcontract or any Order, whether by transfer, merger, operation of law, or otherwise, without the consent of an Authorized Representative of Vigor, which Vigor may grant, withhold or condition in its sole discretion. A change in the control (voting or otherwise) of Subcontractor will be deemed an assignment for purposes of this Section. If Vigor authorizes an assignment or delegation, that authorization will not release Subcontractor from any of its obligations under this Subcontract unless: (a) that authorization expressly releases Subcontractor; (b) the assignee or delegate agrees in writing to be bound by this Subcontract for the benefit of Vigor; and (c) any agreement between Subcontractor and the assignee or delegate states that Vigor has the right to enforce Subcontractor's rights against the assignee or delegate. Any attempted assignment or delegation by Subcontractor without Vigor's consent will be void, and in that event Vigor may, but need not, terminate this Subcontract immediately notwithstanding any notice requirement that would otherwise apply.

**18.2 By Vigor.** Except as expressly permitted in this Master Subcontract or an Order, Vigor will not assign any right or subcontract or otherwise delegate any duty under this Agreement, whether by transfer, merger, operation of law, or otherwise, without the consent of an Authorized Representative of Subcontractor, which Subcontractor will not unreasonably withhold, condition or delay. A change in the control (voting or otherwise) of Vigor will not be deemed an assignment for purposes of this Section. If Subcontractor authorizes an assignment or delegation, that authorization will not release Vigor from any of its obligations under this Agreement unless: (a) that authorization expressly releases Vigor; (b) the assignee or delegate agrees in writing to be bound by this Agreement for the benefit of Subcontractor; and (c) any agreement between Vigor and the assignee or delegate states that Subcontractor has the right to enforce Vigor's rights against the assignee or delegate. Any attempted assignment or delegation by Vigor without Subcontractor's consent will be void, and in that event Subcontractor may, but need not, terminate this Subcontract immediately notwithstanding any notice requirement that would otherwise apply. Subcontractor consents to Vigor's assignment of this Agreement in connection with Vigor's assignment of the Prime Contract.

**19. Succession.** This Subcontract will bind and inure to the benefit of each Party and its permitted successors, assigns, and delegates.

**20. Disputes.** Whenever disputes, disagreements or misunderstandings arise under this Master Subcontract or any Order, Vigor and Subcontractor will attempt in good faith to resolve the issues involved by discussion between senior representatives of each Party and mutual agreement as soon as practicable. Except for the disputes described in Section 7.6 (Pass-Through Claims) and in Section 11 (Injunctive Relief), the following will apply to disputes, disagreements and misunderstanding between the Parties:

**20.1 Technical Mediation.**

(a) If the Parties are unable to resolve a dispute, disagreement or misunderstanding, they agree to use a process of "**Technical Mediation**" to help resolve disputes that are of a technical nature, including (a) disputes as to quality of the Work or the fabrication; (b) conformity of the Work with the Project IP and Specifications; (c) disputes as to deficiencies noted on delivery certificates; (d) disputed change orders having a value under \$200,000; (e) disputed warranty claims having a value under \$200,000; and (f) any other dispute of a similar technical nature that the Parties agree to submit to Technical Mediation.

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(b) Technical Mediation will be conducted in Seattle, Washington. The Parties will agree on the selection of one or more persons to serve as technical mediator. If the Parties are unable to agree on an individual to serve as technical mediator, the Parties will ask the American Bureau of Shipping Technical Services (or its successor entity) to appoint a technical mediator who is not employed by or formally affiliated with American Bureau of Shipping Technical Services. The technical mediator must be a naval architect, marine surveyor, ship builder, or ship repairer, who is knowledgeable about marine construction. The technical mediator will promptly hear and consider all information presented by the Parties about the dispute, will assist the Parties in resolving the dispute, and if requested by either Party, will make recommendations as to how the mediator would rule on the dispute as a fact finder. Any decision or recommendation of the technical mediator is non-binding on the Parties unless the Parties mutually agree in writing in advance of the decision or recommendation that the mediator's decision or recommendation is to be final and binding as if made in a binding arbitration. Neither Party may recover, and the technical mediator is not empowered to award, attorney fees incurred in Technical Mediation or technical arbitration. Any non-binding matter submitted to Technical Mediation may subsequently be referred to binding arbitration as provided in Section 20.2.

## **20.2 Binding Arbitration.**

(a) Failing resolution by mutual agreement or Technical Mediation, all claims, disputes, disagreements or misunderstandings arising under or in connection with or in relation to the Project or the Work will be decided by final and binding arbitration in accordance with the Commercial Arbitration Rules of the International Chamber of Commerce. To invoke arbitration under this Section 20.2, either Party must notify the other, in writing, (a) describing in reasonable detail the issue(s) to be arbitrated, and (b) a demand for arbitration of those issues. If the dispute involves only monetary claims and those claims do not exceed, in the aggregate, more than \$1,000,000, a single neutral arbitrator will resolve the dispute. In all other cases, each Party will appoint one arbitrator and the two arbitrators so appointed will mutually select the third arbitrator. In no event will any arbitrator have a past or present business relationship to any of the Parties. The arbitration will be held in Seattle, Washington. In rendering any decision(s) or award, the single arbitrator or the arbitration panel (as appropriate, the "*Arbitral Tribunal*") will determine the rights and obligations of the Parties in accordance with the Laws of the State of New York and the United States of America. All statutes of limitation that would otherwise be applicable will apply to any arbitration proceeding.

(b) For disputes arising under or related to Section 7 (Change Control), each Party will submit to the Arbitral Tribunal, and will exchange with each other Party in advance of the arbitration hearing, its last best offer regarding the value of the proposed changes and the impact on the schedule of those changes. The Arbitral Tribunal will select only one of the two submitted offers and the relevant Order will be deemed revised accordingly.

(c) Any actions or proceedings in connection with arbitration, including appointment of the arbitrators, enforcement or vacating of any award, the granting of injunctive relief, or appeals must be brought exclusively in the state and federal courts sitting in Seattle, Washington, to whose exclusive jurisdiction and venue the Parties hereby irrevocably submit.

(b) The arbitrator must use all reasonable efforts to render a decision within ninety (90) days following his or her appointment and in the case of a three member arbitration panel, the arbitration panel must use all reasonable efforts to render a decision within ninety (90) days following the appointment of the third arbitrator. The Arbitral Tribunal must render a written decision, signed by the members of the Arbitral Tribunal, explaining the reasons for its award, including a full statement of the facts as found, the rules of law applied in reaching its decision, and a statement regarding the disposition of each claim, and that decision will be final and binding. If the Arbitral Tribunal consists of three members, the

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decision of any two of them will be final and binding. Such decision or award is fully enforceable, and judgment on that award may be entered by, or application may be made for judicial acceptance to, any court having jurisdiction over the Parties or the dispute.

(c) The Arbitral Tribunal is bound by the provisions of the Master Subcontract and has no power to add to, subtract from, or modify any of the terms of the Master Subcontract, including the limitations on consequential damages and warranty claims. The Arbitral Tribunal has no power to award any attorney fees, consequential damages, or punitive damages. The arbitration decision or award is the sole and exclusive remedy between them regarding any claims, counterclaims, issues, or accountings presented or pled to the Arbitral Tribunal. Neither Party has the right to commence or prosecute any action before any court on any dispute, conflict, or controversy arising out of or in relation to the Master Subcontract or the Contract Documents, except (a) for an action to compel arbitration in accordance with this Section 20; (b) for enforcement of the decision(s) or award(s) of the Arbitration Tribunal; or (c) to seek equitable relief as and when expressly permitted by the Master Subcontract and the other Contract Documents. Any arbitration may include any other person substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration, provided that other person has agreed to be bound by that arbitration.

**20.3 Governing Law.** The Master Subcontract and each Order will be governed by the laws of the State of New York, (and the United Nations Convention on Contracts for the International Sale of Goods will not apply to their interpretation or enforcement), except that any provision in this Master Subcontract or any Order that is (a) incorporated in full text or by reference from the Flow Down Clauses, or (b) incorporated in full text or by reference from any agency regulation that implements or supplements the Flow Down Clauses, or (c) that is substantially based on any such agency regulation or Flow Down Clause, will be construed and interpreted according to the Federal common law of Government contracts as enunciated and applied by Federal judicial bodies, Boards of Contract Appeals, and quasi-judicial agencies and bodies of the Federal Government.


**20.4 Confidentiality.** Neither a Party nor any mediator or arbitrator may disclose the existence, content, or results of any mediation or arbitration without the prior written consent of all of the Parties, and the decision of the mediators and arbitrators must be kept confidential absent such consent.

**20.5 Work Continuation and Payment.** Unless Vigor expressly agrees otherwise in writing, if there is a dispute related to an Order, Subcontractor will, pending resolution of that dispute, carry on the Work described in that Order in accordance with the work schedule in that Order, provided Vigor is not in breach of its payment obligations under that Order.

**20.6 Remedies.** All remedies are cumulative and in addition to any other remedies a Party may have at law or in equity, unless this Subcontract expressly provides otherwise.

**20.7 Notice of Intent to Prosecute Claim.** Except where a shorter notice period is required by this Subcontract or the Prime Contract, Subcontractor will not make any claim against Vigor, its sureties or the Government, or institute any suit, action, or proceeding against Vigor, its sureties, or the Government without giving Vigor at least ten days' prior written notice of Subcontractor's intention to do so. That notice will include a description of the claim in reasonable detail, the amount of damages alleged and a description of the calculation of those damages.

**20.8 Applicability to Lower Tier Subcontractors and Suppliers.** Subcontractor will cause each of its lower-tier subcontractors and its vendors that supply goods valued at more than \$500,000 to agree to the choice of law provision and to the arbitration and other provisions in this Section 20 (including with respect to venue and jurisdiction), such that any dispute arising from or related to the Master

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Subcontract and any Order, the Work or the Project may be resolved in a single proceeding subject to the uniform application of the choice of law, arbitration and other dispute resolution provisions set forth in this Section 20.

**20.9 Costs and Fees.** Each Party will pay one-half of the mediation or arbitration fee, and each Party will bear its own legal fees.

**20.10 Survival.** This Section 20 will survive the termination or expiration of the Master Subcontract and all Orders.

**21. Waiver.** A Party's delay or failure to enforce or insist on strict compliance with any provision of this Master Subcontract or any Order will not constitute a waiver or otherwise modify this Master Subcontract or that Order. A Party's waiver of any right granted under this Master Subcontract or any Order on one occasion will not (a) waive any other right; (b) constitute a continuing waiver; or (c) waive that right on any other occasion.

**22. Amendments.** The Parties may amend this Master Subcontract and any Order only by a written instrument that is signed by an Authorized Representative of the Party to be bound.

**23. Interpretation.** Both Parties have had the opportunity to have this Master Subcontract and each Order reviewed by their attorneys. Therefore, no rule of construction or interpretation that disfavors the Party drafting this Master Subcontract or any Order or any of their provisions or that favors the other Party will apply to the interpretation of this Master Subcontract or any Order. Instead, this Master Subcontract and each Order will be interpreted according to the fair meaning of its terms. Caption headings are for convenience of reference only and will not in any way limit or otherwise affect the provisions of any section. The term "and/or" means each and all of the persons, words, provisions or items connected by that term; i.e., it has a joint and several meaning. The word "business day" means Monday through Friday except for federal holidays. Any other reference to a "day" means a calendar day unless it is expressly limited to a business day. All references to "\$" or to "dollars" means United States Dollars. The words "includes" and "including" are not limited in any way and mean "includes or including without limitation." The word "person" includes individuals, corporations, partnerships, limited liability companies, co-operatives, associations and other natural and legal persons. The words "will," "shall," and "must" are synonyms, and each refers to action that is mandatory rather than optional. If there is a clear and direct conflict between or among this Master Subcontract and any of the documents attached to or incorporated in this Master Subcontract, that conflict will be resolved in the following order of priority: (a) the Flow Down Clauses and any other FARS/DFARS applicable to the Prime Contract; (b) the provisions in the Prime Contract regarding (i) the Government's intellectual property rights and warranty of data; and (ii) information security requirements, operations security requirements, and communications security requirements; (c) the License Agreement; (d) conspicuous provisions on the face of an Order; (e) this Master Subcontract, including these Standard Terms; and (f) the provisions in the Prime Contract other than those described in subsections (a) and (b) above.

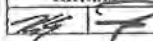
**24. Severability.** If any court, arbitrator, or arbitration panel finds any provision of this Master Subcontract or any Order to be invalid or otherwise unenforceable, that provision will be modified to the extent necessary for it to be enforceable. However, that finding will not affect the validity of any other provision of this Master Subcontract or any Order, and the rest of that contract or Order will remain in full force and effect unless enforcement as modified would be grossly inequitable under all of the circumstances or would frustrate the primary purposes of this Master Subcontract or that Order.

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<i>[Handwritten initials]</i>

25. **Third Parties.** The Parties acknowledge that the Government is an intended third party beneficiary of this Subcontract. Nothing in this Master Subcontract or in any Order is intended to (a) benefit any person other than the Parties and the Government; or (b) give any third persons any right to enforce this Master Subcontract or any Order.

26. **Counterparts and Delivery.** This Master Subcontract, each Order, any of its or their amendments may be executed in counterparts. Each counterpart will be considered an original, and all of them, taken together, will constitute a single agreement. Facsimile signatures will be deemed original signatures for all purposes under this Master Subcontract. When properly signed, this Master Subcontract, any Order, and their respective amendments, may be delivered by facsimile or electronically, and any such delivery will have the same effect as physical delivery of a signed original.

27. **Entire Agreement.** This Master Subcontract, together with the Orders, is the entire agreement and understanding between the Parties regarding the Work described in those Orders, and they supersede and replace the Teaming Agreement and all prior and contemporaneous agreements and understandings regarding that subject matter. Nothing in this Subcontract supersedes, replaces or amends the License Agreement or the TAA, and the License Agreement and the TAA remains in full force and effect in accordance with their respective terms.

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## Appendix F - FLOWDOWN PROVISIONS

The following Federal Acquisition Regulations ("FAR"), Defense Federal Acquisition Regulations Supplement ("DFAR") clauses, and other supplemental agency clauses (collectively, "Flow Down Clauses") will apply to this Subcontract, as required by the terms of the Prime Contract or by operation of law or regulation. However, to the extent that a note below renders a particular Flow Down Clause inapplicable to this Subcontract or to any Work Order, that Flow Down Clause will be deemed self-deleting.

Any mandatory Flow Down Clause that may have been inadvertently omitted from this Appendix will nonetheless be deemed to be included. Also, Subcontractor will, at Vigor's request, accept any additional or different Flow Down Clauses that Vigor may, from time to time, deem necessary to facilitate compliance with the Prime Contract.

The effective version of each Flow Down Clause will be the same version that appears in the Prime Contract. In all such Flow Down Clauses, except to extent the context requires otherwise, the term "Contractor" will mean Subcontractor, the term "Contract" will mean this Subcontract, and the terms "Government" and "Contracting Officer" will mean Vigor and its purchasing representative, respectively.

To the extent that any Flow Down Clauses call for disputes to be resolved under the FAR "Disputes" clause, any disputes to which the Government is not a party will instead be disposed of according to the dispute provisions of this Subcontract.

### PART I: Standard Flow Down Clauses

CLAUSE #	TITLE	APPLICABILITY NOTES
52.203-6	Restrictions on Subcontractor Sales to the Government.	All Orders in excess of the simplified acquisition threshold.
52.203-7	Anti-Kickback Procedures	All Orders in excess of \$150,000, excluding paragraph (c)(1).
52.203-12	Limitation on Payments to Influence Certain Federal Transactions	All Orders in excess of \$150,000.
52.203-13	Contractor Code of Business Ethics and Conduct	All Orders in excess of \$5.5 million and having a performance period of more than 120 days.
52.203-14	Display of Hotline Poster(s).	All Orders in excess of \$5.5 million, excluding Orders for the acquisition of a commercial item or to be performed entirely outside the United States.
52.203-15	Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009	All Orders funded in whole or in part with Recovery Act funds.
52.203-17	Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights	All Orders in excess of the simplified acquisition threshold.
52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements	All Orders.
52.204-2	Security Requirements.	All Orders that involve access to classified

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52.204-9	Personal Identity Verification of Contractor Personnel.	information. All Orders pursuant to which Seller's employees are required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.
52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards	All Orders.
52.204-21	Basic Safeguarding of Covered Contractor Information Systems	All Orders pursuant to which the Seller may have Federal contract information residing in or transiting through its information system, excluding Orders for commercially available off-the-shelf items.
52.209-6	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment	All Orders in excess of \$35,000 in value, excluding Orders for commercially available off-the-shelf items.
52.211-5	Material Requirements	All Orders.
52.211-15	Defense Priority and Allocation Requirements	All Orders bearing a notice of DPAS priority rating.
52.214-26	Audit and Records—Sealed Bidding.	All Orders expected to exceed the threshold in FAR 15.403-4(a)(1) for submission of certified cost or pricing data.
52.214-27	Price Reduction for Defective Certified Cost or Pricing Data—Modifications—Sealed Bidding	All Orders.
52.214-28	Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding.	All Orders that, when entered into, exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4(a)(1).
52.215-2	Audit and Records—Negotiation.	All Orders that exceed the simplified acquisition threshold, and: (1) that are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these; (2) for which certified cost or pricing data are required; or (3) that require the Seller to furnish reports as discussed in paragraph (e) of this clause.
52.215-10	Price Reduction for Defective Certified Cost or Pricing Data	All Orders.
52.215-11	Price Reduction for Defective Certified Cost or Pricing Data—Modifications	All Orders.
52.215-12	Subcontractor Certified Cost or Pricing Data.	All Orders that, when entered into, exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4(a)(1).
52.215-13	Subcontractor Certified Cost or Pricing Data—Modifications.	All Orders that, when entered into, exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4(a)(1).
52.215-14	Integrity of Unit Prices.	All Orders for other than: (1) acquisitions at or below the simplified acquisition threshold in FAR Part 2; (2) construction or architect-engineer services under FAR Part 36; (3) utility services

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		under FAR Part 41; (4) services where supplies are not required; (5) commercial items; and (6) petroleum products.
52.215-15	Pension Adjustments and Asset Reversions.	All Orders that meet the applicability requirement of FAR 15.408(g).
52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions.	All Orders that meet the applicability requirements of FAR 15.408(j).
52.215-19	Notification of Ownership Changes.	All Orders that meet the applicability requirement of FAR 15.408(k).
52.215-21	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications	All Orders.
52.215-22	Limitations on Pass-Through Charges – Identification of Subcontract Effort	All Orders pursuant to which Seller intends to subcontract to a lower-tier subcontractor more than 70 percent of the total cost of work to be performed under this Order.
52.215-23	Limitations on Pass-Through Charges	All cost-reimbursement Orders that exceed the simplified acquisition threshold, except if Vigor's prime contract is with DoD, then all cost-reimbursement Orders and fixed-price Orders, except those identified in FAR 15.408(n)(2)(i)(B)(2), that exceed the threshold for obtaining cost or pricing data in accordance with FAR 15.403-4.
52.219-8	Utilization of Small Business Concerns	All Orders that offer further subcontracting opportunities if Vigor's prime contract requires a subcontracting plan.
52.219-9	Small Business Subcontracting Plan	All Orders expected to exceed \$700,000, unless Seller is a small business concern or is providing a commercial item.
52.222-1	Notice to the Government of Labor Disputes	All Orders.
52.222-4	Contract Work Hours and Safety Standards —Overtime Compensation.	All Orders that may require or involve the employment of laborers and mechanics.
52.222-17	Nondisplacement of Qualified Workers	All Orders over the simplified acquisition threshold entered into for Seller to perform services under a services contract, as defined at FAR 22.001, that succeeds a contract for performance of the same or similar work at the same location and that has not exempted by FAR 22.1203-2 or waived in accordance with FAR 22.1203-3.
52.222-20	Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000	All Orders.
52.222-21	Prohibition of Segregated Facilities	All Orders subject to FAR 52.222-26.
52.222-26	Equal Opportunity	All Orders not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended.

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52.222-35	Equal Opportunity for Veterans	All Orders of \$150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.
52.222-36	Equal Opportunity for Workers with Disabilities.	All Orders in excess of \$15,000 unless exempted by rules, regulations, or orders of the Secretary of Labor.
52.222-37	Employment Reports on Veterans	All Orders of \$150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.
52.222-40	Notification of Employee Rights Under the National Labor Relations Act	All Orders that exceed \$10,000 and will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009.
52.222-41	Service Contract Labor Standards	All Orders subject to the Service Contract Labor Standards statute.
52.222-50	Combating Trafficking in Persons	All Orders.
52.222-51	Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements.	All Orders for exempt services.
52.222-53	Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements.	All Orders for exempt services.
52.222-54	Employment Eligibility Verification	All Orders.
52.222-55	Minimum Wages Under Executive Order 13658	All Orders subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and which are to be performed in whole or in part in the United States.
52.222-60	Paycheck Transparency (Executive Order 13673)	All Orders that exceed \$500,000, at all tiers, for other than commercially available off-the-shelf items.
52.222-62	Paid Sick Leave Under Executive Order 13706	All Orders subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and which are to be performed in whole or in part in the United States.
52.223-3	Hazardous Material Identification and Material Safety Data	All Orders requiring the delivery of hazardous materials.
52.223-7	Notice of Radioactive Materials	All Orders for radioactive materials meeting the criteria in paragraph (a) of this clause.
52.223-18	Encouraging Contractor Policies to Ban Text Messaging While Driving.	All Orders exceeding the micro-purchase threshold.
52.225-8	Duty-Free Entry.	All Orders pursuant to which: (1) Supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or (2) other foreign

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		supplies in excess of \$15,000 may be imported into the customs territory of the United States.
52.225-13	Restrictions on Certain Foreign Purchases.	All Orders.
52.225-26	Contractors Performing Private Security Functions Outside the United States	All Orders that will be performed outside the United States in areas of: (1) Combat operations, as designated by the Secretary of Defense; or (2) Other significant military operations, upon agreement of the Secretaries of Defense and State that the clause applies in that area.
52.227-1	Authorization and Consent.	All Orders expected to exceed the simplified acquisition threshold.
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement.	All Orders expected to exceed the simplified acquisition threshold.
52.227-9	Refund of Royalties.	All Orders in which the amount of royalties reported during negotiation of the Order exceeds \$250.
52.227-10	Filing of Patent Applications—Classified Subject Matter.	All Orders that cover or are likely to cover classified subject matter.
52.227-11	Patent Rights—Ownership by the Contractor.	All Orders for experimental, developmental, or research work to be performed by a small business concern or nonprofit organization.
52.227-13	Patent Rights—Ownership by the Government.	All Orders for experimental, developmental, or research work.
52.227-14	Rights in Data—General	All Orders.
52.228-5	Insurance—Work on a Government Installation.	All Orders that require work on a Government installation.
52.230-2	Cost Accounting Standards.	All Negotiated Orders in excess of \$750,000, excluding negotiated Orders otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.
52.230-3	Disclosure and Consistency of Cost Accounting Practices.	All Negotiated Orders in excess of \$750,000, excluding negotiated Orders otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.
52.230-4	Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns	All Negotiated Orders in excess of \$750,000, excluding negotiated Orders otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.
52.230-6	Administration of Cost Accounting Standards	All Orders containing the clause at FAR 52.230-2, FAR 52.230-3, FAR 52.230-4, or FAR 52.230-5.
52.232-40	Providing Accelerated Payments to Small Business Subcontractors	All Orders with small business concerns.
52.234-1	Industrial Resources Developed Under Title III, Defense Production Act.	All Orders.
52.242-15	Stop-Work Order	All Orders.
52.244-6	Subcontracts for Commercial Items	All Orders.
52.245-1	Government Property.	All Orders under which Government property is acquired or furnished for Order performance.

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52.247-63	Preference for U.S.-Flag Air Carriers.	All Orders that may involve international air transportation.
52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels	All Orders.
52.248-1	Value Engineering.	All Orders.
252.203-7001	Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies.	All Orders that are first-tier subcontracts exceeding the simplified acquisition threshold, excluding Orders for commercial items or components.
252.203-7002	Requirement to Inform Employees of Whistleblower Rights.	All Orders.
252.203-7004	Display of Hotline Posters.	All Orders exceeding \$5.5 million, excluding Orders for the acquisition of a commercial item.
252.204-7000	Disclosure of Information.	All Orders.
252.204-7009	Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information.	All Orders for services that include support for the Government's activities related to safeguarding covered defense information and cyber incident reporting.
252.204-7010	Requirement for Contractor to Notify DoD if the Contractor's Activities are Subject to Reporting Under the U.S.-International Atomic Energy Agency Additional Protocol.	All Orders subject to the provisions of the U.S. International Atomic Energy Agency Additional Protocol.
252.204-7012	Safeguarding of Unclassified Controlled Technical Information	All Orders for operationally critical support or for which performance will involve covered defense information.
252.208-7000	Intent to Furnish Precious Metals as Government-Furnished Material.	All Orders for items containing precious metals.
252.211-7000	Acquisition Streamlining.	All Orders exceeding \$1.5 million.
252.211-7003	Item Identification and Valuation	All Orders for items for which item unique identification is required in accordance with this clause.
252.222-7006	Restrictions on the Use of Mandatory Arbitration Agreements.	All Orders valued in excess of \$1 million, excluding Orders for the acquisition of commercial items.
252.222-7007	Representation Regarding Combating Trafficking in Persons	All Orders.
252.223-7006	Prohibition on Storage, Treatment, and Disposal of Toxic or Hazardous Materials.	All Orders that require, may require, or permit Seller access to a DoD installation.
252.223-7008	Prohibition of Hexavalent Chromium	All Orders.
252.225-7001	Buy American and Balance of Payments Program	All Orders.
252.225-7007	Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies.	All Orders for items covered by the United States Munitions List.
252.225-7009	Restriction on Acquisition of Certain Articles Containing Specialty Metals	All Orders for items containing specialty metals.
252.225-	Duty-Free Entry.	All Orders for: (1) qualifying country

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7013		components; or (2) nonqualifying country components for which the duty will exceed \$200 per unit.
252.225-7016	Restriction on Acquisition of Ball and Roller Bearings.	All Orders, excluding Orders for: (1) commercial items; or (2) items that do not contain ball or roller bearings.
252.225-7019	Restriction on Acquisition of Anchor and Mooring Chain.	All Orders for items containing welded shipboard anchor and mooring chain, four inches or less in diameter.
252.225-7021	Trade Agreements	All Orders.
252.225-7025	Restriction on Acquisition of Forgings.	All Orders for forging items or for other items that contain forging items.
252.225-7036	Buy American—Free Trade Agreements--Balance of Payments	All Orders.
252.225-7048	Export-Controlled Items	All Orders.
252.226-7001	Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns.	All Orders exceeding \$500,000.
252.227-7013	Rights in Technical Data Noncommercial Items	All Orders pursuant to which technical data for noncommercial items, or for commercial items developed in any part at Government expense, is to be obtained from Seller for delivery to the Government.
252.227-7014	Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.	All Orders pursuant to which noncommercial computer software or computer software documentation is to be obtained from Seller for delivery to the Government.
252.227-7015	Technical Data - Commercial Items	All Orders pursuant to which technical data related to commercial items developed in any part at private expense will be obtained from Seller for delivery to the Government.
252.227-7016	Rights in Bid or Proposal Information.	All Orders.
252.227-7019	Validation of Asserted Restrictions--Computer Software.	All Orders pursuant to which Seller will be furnishing computer software to the Government.
252.227-7030	Technical Data--Withholding of Payment	All Orders that include the clause at 252.227-7013.
252.227-7037	Validation of Restrictive Markings on Technical Data	All Orders requiring the delivery of technical data.
252.227-7038	Patent Rights—Ownership by the Contractor (Large Business).	All Orders for experimental, developmental, or research work, excluding Orders for work to be performed by a small business concern or nonprofit organization.
252.244-7000	Subcontracts for Commercial Items and Commercial Components (DoD Contracts)	All Orders.
252.246-7003	Notification of Potential Safety Issues	All Orders for: (1) parts identified as critical safety items; (2) systems and subsystems,


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		assemblies, and subassemblies integral to a system; or (3) repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system.
252.246-7007	Contractor Counterfeit Electronic Part Detection and Avoidance System	All Orders for electronic parts or assemblies containing electronic parts.
252.246-7008	Sources of Electronic Parts.	All Orders for electronic parts or assemblies containing electronic parts, unless the Seller is the original manufacturer.
252.247-7023	Transportation of Supplies by Sea	All Orders pursuant to which Seller will transport supplies by sea.
252.247-7024	Notification of Transportation of Supplies by Sea	All Orders.
252.249-7002	Notification of Anticipated Contract Termination or Reduction.	All Orders exceeding \$700,000.

**PART II: Special Flow Down Clauses**

CLAUSE #	TITLE	APPLICABILITY NOTES
52.209-4020	Anti-Terrorism (AT) Level I Training Requirement	All Orders requiring access to Army installations, facilities, or controlled access areas.
52.209-4022	iWatch Training	All Orders.
52.204-4020	Access and General Protection/Security Policy and Procedure	All Orders.
52.209-4021	Anti-Terrorism (AT) Awareness Training Requirement for Contractor Personnel Traveling Overseas	All Orders.
52.209-4024	Information Assurance (IA) / Information Technology (IT) Training	All Orders.
52.215-4400	Army Information Systems (IS) Security Requirement	All Orders requiring access to Government owned or operated automated information systems, networks, or databases.
52.215-4405	Access to the Detroit Arsenal: Identifying Contractor Employee; Non-Disclosure Statement	All Orders requiring access to the Detroit Arsenal.
52.223-4002	Use of Class I Ozone Depleting Substances	All Orders.
52.246-11	Higher-Level Contract Quality Requirement	All Orders for critical and complex items (see FAR 46.203(b) and (c)); or any Order requiring (i) control of such things as design, work operations, in-process control, testing and inspection; or (ii) attention to such factors as organization, planning, work instructions, documentation control, and advanced metrology.  Subcontractor shall comply with the following higher-level quality standard: ISO 9001:2015 (15

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252.227-7025	Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends	All Orders.
252.227-7026	Deferred Delivery of Technical Data or Computer Software	All Orders.
252.227-7027	Deferred Ordering of Technical Data or Computer Software	All Orders.
252.227-7039	Patents--Reporting of Subject Inventions	All Orders.
252.246-7001	Warranty of Data	All Orders.
52.227-10	Filing of Patent Applications--Classified Subject Matter	All Orders.

#### ORGANIZATIONAL CONFLICTS OF INTEREST

Subcontractor and its subcontractors, consultants, parent companies, subsidiaries, joint ventures, or other business affiliates at any tier may be excluded from performing under this Order if the Government's Procuring Contracting Officer (PCO) determines that an Organizational Conflict of Interest (OCI) exists due to bias or unfair competitive advantage.

Subcontractor shall flow down this provision in any subcontracts or other related instruments (at all tiers). Subcontractor shall monitor its activities and the activities of its subcontractors and related entities, and promptly disclose any actual or potential OCIs and any actions taken or proposed to negate or mitigate such conflicts.

#### PART III: Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data or Computer Software.

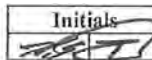
The terms used in this provision are defined in the Rights in Technical Data--Noncommercial Items clause of the Prime Contract.

The identification and assertion requirements in this provision apply only to technical data, including computer software documentation, or computer software to be delivered with other than unlimited rights.

Subcontractor asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following technical data or computer software should be restricted:

Technical Data or Computer Software to be Furnished With Restrictions*	Basis for Assertion**	Asserted Rights Category***	Name of Person Asserting Restrictions****
(LIST)*****	(LIST)	(LIST)	(LIST)

\*For technical data (other than computer software documentation) pertaining to items, components, or processes developed at private expense, identify both the deliverable technical data and each such item, component, or process. For computer software or computer software documentation identify the software or documentation.

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\*\*Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions. For technical data, other than computer software documentation, development refers to development of the item, component, or process to which the data pertain. The Government's rights in computer software documentation generally may not be restricted. For computer software, development refers to the software. Indicate whether development was accomplished exclusively or partially at private expense. If development was not accomplished at private expense, or for computer software documentation, enter the specific basis for asserting restrictions.

\*\*\*Enter asserted rights category (e.g., government purpose license rights from a prior contract, rights in SBIR data generated under another contract, limited, restricted, or government purpose rights under this or a prior contract, or specially negotiated licenses).

\*\*\*\*Corporation, individual, or other person, as appropriate.

\*\*\*\*\*Enter "none" when all data or software will be submitted without restrictions.

Initials


Appendix G – Request for Payment and Release of Liens and Claims Forms

BMT Request for Payment No. \_\_\_\_  
With Waiver and Release

To: Vigor Works LLC ("Vigor")

From: BMT Designers & Planners, Inc. ("BMT")

Re: BMT Invoice No. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_ (the "*Effective Date*"), in the amount of \$\_\_\_\_\_ (the "*Invoice*") related to Contract W56HZV-17-D-0086 awarded to Vigor on September 28, 2017 by the United States Army for the fabrication of Maneuver Support Vessels (Light) (the "*MSV(L) Project*")

1. BMT represents and warrants to Vigor that:

Second Tier Subcontracts/Suppliers. Attached to this *Request for Payment* is a true, accurate, and complete copy of a *Vendor Waiver and Lien Release*<sup>1</sup> from each of the BMT Vendors (defined below) that provided goods and/or services described or otherwise included in the Invoice. As of the Effective Date, except for the Liens, rights and claims securing the payment of the unpaid invoices and progress payment request(s) attached hereto (the "*Open Vendor Invoices*"); (i) none of BMT's suppliers and subcontractors (the "*BMT Vendors*") have any mechanics' liens, materialmen's liens, boat liens, maritime liens, stop notice rights, bond claims, retainage claims, or any other claims or liens (collectively, "*Liens/Claims*") against the services they performed or the goods they provided related to the MSV(L) Project (collectively, the "*Subcontracted Work*"); and (ii) each BMT Vendor has released all Liens/Claims related to its Subcontracted Work.

BMT. As of the Effective Date, except for the Liens/Claims securing payment of the unpaid invoices and progress payment request(s) listed below (the "*Open BMT Invoices*"); (i) BMT has no Liens/Claims against the services performed or the goods provided by or through BMT related to the MSV(L) Project (collectively, the "*BMT Work*"); and (ii) BMT hereby releases, all Liens/Claims related to the BMT Work.

Open BMT Invoices:

- Invoice/Request # \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_ Amount Due: \$\_\_\_\_\_


2. Upon BMT's receipt of the amount due and owing under the Invoice and any of the other Open BMT Invoices: (a) BMT waives and releases all Liens/Claims arising by or through BMT for the goods and services covered by the Invoice and the other Open BMT Invoices; and (b) BMT will hold that amount in trust until it has paid the BMT Vendors for the Subcontracted Work covered by the Invoice and those other Open BMT Invoices.

BMT Designers & Planners, Inc.

By: \_\_\_\_\_

Title: [President][Chief Operating Officer][Chief Financial Officer]

<sup>1</sup> Use the *Vendor Waiver and Lien Release form*, attached.

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Date: \_\_\_\_\_, 20\_\_\_\_

**Vendor Waiver and Lien Release**

To: BMT Designers & Planners, Inc. ("**BMT**") and Vigor Works LLC (the "**Prime Contractor**")

From: \_\_\_\_\_ [Insert name of Subcontractor] ("**Subcontractor**")

Re: Contract W56HZV-17-D-0086 (the "**Prime Contract**") awarded on September 28, 2017 by the United States Army (the "**Government**") to the Prime Contractor for the fabrication of Maneuver Support Vessels (Light) (the "**MSV(L) Project**")

- i. BMT's Obligations to Subcontractor. Subcontractor represents and warrants to BMT and to Prime Contractor that: As of \_\_\_\_\_, 20\_\_ (the "**Effective Date**"): (a) BMT is not in default of its obligation to pay Subcontractor for any goods or services provided by or through Subcontractor related to the MSV(L) Project (the "**Work**"); (b) except for the current invoices and/or progress payment request(s) Subcontractor has submitted to BMT listed below (collectively, the "**Open Subcontractor Invoices**"), BMT has paid all invoices and/or progress payment request(s) that Subcontractor has previously submitted to BMT related to the MSV(L) Project through the Effective Date; and (c) except for the liens, rights and claims securing payment of the amounts due and owing under the Open Subcontractor Invoices, Subcontractor hereby releases all mechanics' liens, materialmen's liens, boat liens, maritime liens, stop notice rights, bond claims, retainage claims, or any other claims or liens (collectively, "**Liens/Claims**") arising by or through Subcontractor related to the Work.

**Open Subcontractor Invoices:**

- Invoice/Request # \_\_\_\_\_ dated \_\_\_\_\_, 2018 Amount Due: \$ \_\_\_\_\_
2. Subcontractor's Obligations to its Vendors. As of the Effective Date: (a) Subcontractor is not in default of its obligation to pay its suppliers and subcontractors (collectively, the "**Subcontractor Vendors**") for any Work they provided; and (b) there are no Liens/Claims arising by or through the Subcontractor Vendors related to the MSV(L) Project.
3. Conditional Release of Liens/Claims: Payment of the Subcontractor Vendors. Upon Subcontractor's receipt of the amount due and owing under the Open Subcontractor Invoices: (a) Subcontractor waives and releases all Liens/Claims arising by or through Subcontractor for the goods and services covered by each such Open Subcontractor Invoice; and (b) Subcontractor will hold that amount in trust until it has paid the Subcontractor Vendors for the Work they provided.

[Subcontractor]

By: \_\_\_\_\_  
Title: [President][Chief Operating Officer][Chief Financial Officer]  
Date: \_\_\_\_\_, 20\_\_\_\_

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**Appendix H – Authorized Publicity Statements**

**Appendix H: Authorized Publicity Statements**

Per clause 10 of the Vigor-BMT subcontract, the statements contained in this appendix are expressly authorized for use by BMT Designers & Planners, Inc. ("BMT") and its UK affiliates BMT Nigel Gee and BMT Defence Services.

**1. Terms and Interchangeability**

In all such instances of this Appendix, the following terms shall be considered interchangeable, meaning any explicitly authorized statement or reference using one of the following terms may freely use one of the equivalent terms without requiring additional approval:

- "MSV(L)", "Maneuver Support Vessel (Light)", "Maneuver Support Vessel (Light) (MSV(L))"
- "Vigor", "Vigor Works", "Vigor Works LLC"
- "U.S. Army", "Army", "USA"
- "BMT", "BMT Designers & Planners", "BMT Designers & Planners, Inc.", "BMT D&P"
- "CAIMEN", "Caimen", "CAIMEN®", "Caimen®"
- "Parent design", "parent hull", "parent hullform"

**2. References to MSV(L) Project in Bids and Proposals**

The restrictions and requirements of Clause 10 shall be construed in such a manner that BMT is explicitly authorized to refer to the MSV(L) project, and authorized to disclose contract information (including, but not limited to, contract number, contract and subcontract price, period of performance, project background and work scope narratives, U.S. Army's name as end customer and contracting officer contact information, and Vigor's name and reference contact information) as may be required to submit compliant bids and proposals to U.S. Government, State/Local Government, or commercial customers, provided BMT does so in strict compliance with the limitations and restrictions in Section 3 of the License Agreement. Such references, which typically take the form of "Past Performance" examples will be limited to the information required by the solicitation or invitation for bid. Any pages with such information must be appropriately denoted with "Proprietary: Do not Disclose" or other similar marking that restricts disclosure or use of the information solely to the purposes of proposal evaluation or as a necessary part of a contract.

**3. Imagery**

BMT may use images of the MSV(L) that have been approved for release by the U.S. Army with the following caption text included that is as conspicuous as the location, font, size, and color of other such captions in the applicable document, or if no other such captions exist, in at least 10-point font:

"MSV(L) by Vigor/BMT"

**4. Public Statements, Press Releases, and Displays**

BMT may include the following text in any public statement, press release, brochure, website, or display in a location, font, size, and color that is as conspicuous as the location, font, size and color of other any references to BMT's contribution to the MSV(L).

"Vigor is the Prime Contractor and builder of the MSV(L), which is based on a BMT design"

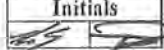
"BMT is Vigor's design partner for the MSV(L)"

"BMT is a subcontractor to Vigor"

"The MSV(L) design is based on BMT's CAIMEN family of landing craft"

"The MSV(L) design is a derivative of the BMT CAIMEN 90 landing craft"

"BMT is the lead design partner for the MSV(L)"

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"The MSV(L) is the first derivative of BMT's CAIMEN family of landing craft to be constructed"  
Any and all other references to the MSV(L) or Vigor must be reviewed and approved by Vigor in advance.

#### 5. Customer Lists

BMT routinely includes lists of customers in its marketing communications.

In the context of U.S. Government and commercial marketing communications, these lists typically fall under headings such as "Agencies we Serve", "Our Customers", and the like, without routinely referring to specific projects. Figure 1 provides an example from a recent BMT brochure.

BMT is authorized to include "Department of Defense", "DOD", "U.S. Army", "Army Watercraft Systems (AWS)", "Vigor", and "Vigor Works LLC" in such lists.

#### Customer Agencies

BMT provides services and support to a range of U.S. Government agencies, including both civilian and military organizations. These customer agencies include:

- U.S. Department of Agriculture (USDA)
  - Agricultural Research Service (ARS)
  - Animal and Plant Health Inspection Service (APHIS)
  - U.S. Forest Service (FS)
- U.S. Department of Commerce
  - National Oceanic and Atmospheric Administration (NOAA)
- U.S. Department of Homeland Security (DHS)
  - DHS Science & Technology Directorate
  - U.S. Coast Guard (USCG)
  - Surface Forces Logistics Center (SFLC)
- U.S. Department of Defense
  - U.S. Air Force
  - U.S. Navy
    - Chief of Naval Operations, Environmental Readiness Division
    - Commander, Navy Installations Command (CNIC)
    - Naval Ordnance Safety and Security Activity (NOSSA)
    - Naval Surface Warfare Center, Carderock Division (NSWCDD)
    - Naval Surface Warfare Center, Indian Head EOD Technology Division (IHEDTD)
    - Surface Combat Systems Center (SCSC), Wallops Island



Figure 1: Example of Customer List from BMT Brochure

#### 6. Hyperlinks

BMT and its affiliates may hyperlink from their own websites to those of any publicly published content regarding the MSV(L) external to BMT's own websites, including hyperlinks to content on Vigor websites; provided that Vigor may terminate that right at any time by giving BMT written notice.

Initials
<i>[Handwritten initials]</i>